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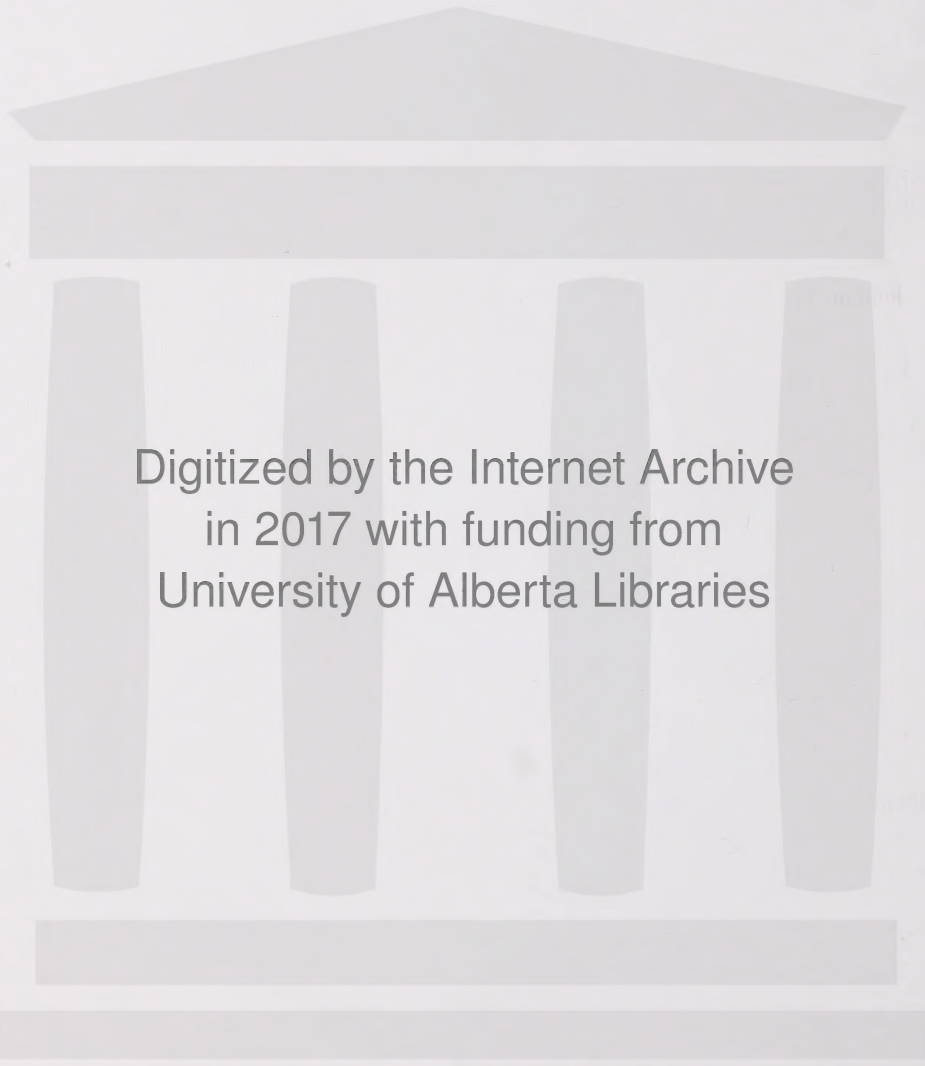
LEGAL Studies 2030

Environmental Law



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LEGAL Studies 2030

Environmental Law



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Legal Studies 2030
Environmental Law
Student Module Booklet
Learning Technologies Branch
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Note: While every effort has been made to make the information in this course accurate, remember that the law frequently changes. This course has been produced for students; it has been written by teachers, not lawyers, and it is not intended to be used as a source of advice for people experiencing legal problems. If you are in need of legal advice, consult a lawyer; do not rely on the information in this course.

This document is intended for	
Students	✓
Teachers	✓
Administrators	
Home Instructors	
General Public	
Other	



You may find the following Internet sites useful:

- Alberta Education, <http://www.education.gov.ab.ca>
- Learning Technologies Branch, <http://www.education.gov.ab.ca/lrb>
- Learning Resources Centre, <http://www.lrc.education.gov.ab.ca>

Exploring the electronic information superhighway can be educational and entertaining. However, be aware that these computer networks are not censored. Students may unintentionally or purposely find articles on the Internet that may be offensive or inappropriate. As well, the sources of information are not always cited and the content may not be accurate. Therefore, students may wish to confirm facts with a second source.

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WELCOME

Welcome to Legal Studies 2030. We hope you enjoy your study of Environmental Law.



- Environmental Protection Legislation



- The Role of Groups and Individuals



- Challenging Issues
- Law-Related Careers

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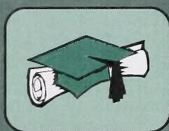
CAREER AND TECHNOLOGY STUDIES INFORMATION

Legal Studies is one of the 22 strands of Career and Technology Studies designed for Alberta secondary students. The optional CTS program will provide you with opportunities to

- investigate career options and make effective career choices
- use technology effectively and efficiently
- apply and reinforce concepts you learned in other courses
- prepare you for entry into the workplace or further learning

The strands in Career and Technology Studies are designed to stand alone or be integrated with other strands or school courses to meet your learning needs.

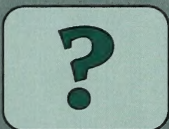
CTS has a number of basic competencies (knowledge, skills, and attitudes) that will be identified throughout by these icons:



Careers: Identify appropriate career linkages within the strand being studied.



Communication: Effectively present concise written, visual, and oral communications.



Ethics: Make judgements about whether behaviour is right or wrong on personal, community, and global levels.



Technology: Effectively use technology when required.



Innovation: Recognize opportunities and problems, and identify and suggest new ideas.



Task Management: Demonstrate an ability to locate and use resources and an ability to use time effectively.



Teamwork: Work towards goals co-operatively, collaboratively, or independently, and acknowledge the opinions of others.



Safety: Assess potential risks, and follow personal and environmental safety procedures.

These basic competencies build skills that are useful in a broad range of lifetime endeavours.

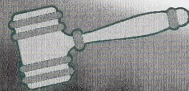
The eight icons described above indicate to you that a basic competency has been identified in a lesson. Note, however, that some of these competencies might relate more to one strand than another, so it might be that not all icons will appear in this particular course.

Note carefully that CTS courses are competency based; you must, therefore, successfully complete each component to receive credit for the course.

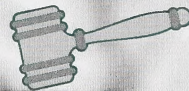
LEGAL STUDIES STRAND INFORMATION



Introductory



Intermediate



Advanced

Personal Context

LGS 1010
You and the Law 1:
As a Consumer and
as a Family Member

LGS 1020
You and the Law 2:
In Society and
in the Workplace

Societal Context

LGS 2010
Family Law

LGS 2020
Labour Law

LGS 2030
Environmental Law

LGS 2050
Law and the Traveller

LGS 3010
Consumer and Property Law

LGS 3020
Dispute Resolution

LGS 3040
Negligence

LGS 3050
Law and Small Business

LGS 3060
Controversy and Change

LGS 3070
Landmark Decisions

LGS 3080
Criminal Law

-- Recommended sequence

Some of these courses may not yet be in a distance learning format.

LEGAL STUDIES 2030 OVERVIEW

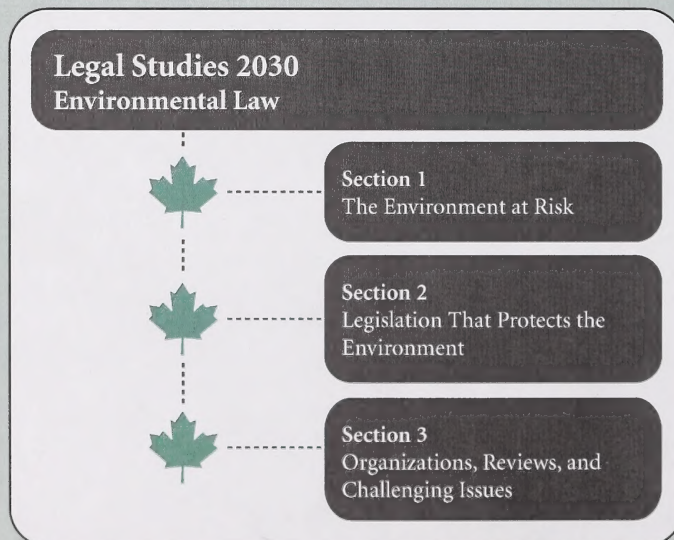
Acid rain. Holes in the ozone layer. Global warming. Does all this sound familiar? How about Clayoquot Sound? The Cheviot Mine? The Daishowa pulp mill?

Nearly everyone in Canadian society is aware of pollution problems like global warming, and many have followed the struggles of conservationists and Native groups to protect the environment in places like Clayoquot Sound and, on a global level, the struggle of concerned nations to implement the Kyoto Accord to reduce “greenhouse” gases. Today, most Canadians recognize the need to make changes in their own lifestyles if our environment is to be preserved for future generations.



The truth is, though, that relatively few Canadians understand much about the legal aspects of environmental issues—the laws that have been passed to protect the environment, court battles that have been fought over environmental issues, and the judgements that have been brought down in those battles.

In this course you'll get an overview of environmental law as it exists in Canada today. This is a relatively new area of law, but it has rapidly become an extremely important one. If progress is to be made, it's vital that Canadians understand the basic principles of this area of law. When you've finished this course, you'll be one of those Canadians who can claim that they do understand those basic principles.



Assessment and Feedback

This course is worth one credit and is comprised of three sections. Within each section, your work is grouped into lessons. Within the lessons, there are readings, explanations, and questions for you to work through. You'll correct your work yourself using the suggested answers that follow each lesson. These suggested answers will provide you with immediate feedback on your progress.

Accompanying this Student Module Booklet are two Assignment Booklets. You'll be referred to the assignments in these booklets from time to time as you work through the course—frequently at the end of a section. Your work in these booklets will be submitted to your teacher for assessment, and at least a portion of your grade will be based on them. The mark distribution is as follows:

Section 1 Assignment	20 marks
Section 2 Assignment	40 marks
Section 3 Assignment	40 marks
TOTAL	100 marks

Be sure to check with your teacher if this mark allocation is valid for you. Some teachers like to include other reviews and assignments.

In addition to your assignments, you will likely be required to complete a final test. The weighting for this final test will be determined by your teacher.

Resources

In order to complete Legal Studies 2030, you'll need a notebook or binder in which to respond to questions asked in this Student Module Booklet. You should also have access to a computer and complete your assignments with a word-processing application wherever possible. As well, you should arrange to have access to the Internet. Though it won't be mandatory, some Going Further activities may direct you to watch a live or recorded television show.

LearnAlberta.ca

LearnAlberta.ca is a protected digital learning environment for Albertans. This Alberta Education portal, found at <http://www.learnalberta.ca>, is a place where you can support your learning by accessing resources for projects, homework, help, review, or study.

For example, LearnAlberta.ca contains a large Online Reference Centre that includes multimedia encyclopedias, journals, newspapers, transcripts, images, maps, and more. The National Geographic site contains many current video clips that have been indexed for Alberta Programs of Study. The content is organized by grade level, subject, and curriculum objective. Use the search engine to quickly find key concepts. Check this site often as new interactive multimedia segments are being added all the time.

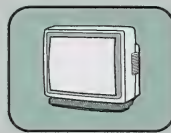
If you find a password is required, contact your teacher or school to get one. No fee is required.

Visual Cues

As well as the CTS basic-competency visual cues presented earlier, from time to time you may encounter the following cues or icons in the margin of this module booklet. Be sure you understand what they're prompting you to do.



Internet



Television

Remember that any website address given in this course is subject to change.

Strategies for Completing This Course

Organize your materials and work area before you begin. Be sure that you have everything that you need. You should also have a quiet area in which to work, away from distractions. Create a schedule for yourself, and display it as a reminder.

Because one of the basic competencies of the CTS program involves skills in working with others, you're encouraged to work with a partner throughout the course if possible. Your partner can be a friend, classmate, or family member. You don't need to work with the same partner all of the time. If you can't work with a regular partner, it would help if there were someone—a family member perhaps—with whom you can work from time to time.

The Going Further boxes that you'll encounter in the Student Module Booklet signal optional enrichment material. Going Further provides opportunities for you to investigate or research a topic or concept that you've explored in the lesson and that particularly interests you. Going Further may also give you a chance to apply your knowledge and skills in a practical way. You're encouraged to read the Going Further suggestions and to attempt these enrichment activities whenever possible.

To achieve success in this course, be sure to read all the directions carefully; work slowly and systematically through the material in the Student Module Booklet. This approach will ensure that you're prepared for your assignments. Try to set realistic goals for yourself each day and each week so that you'll complete the course in a reasonable time. Do your assignments regularly, and don't forget to review and proofread your work before sending it to your teacher. Careful work habits will greatly increase your chances for success in Legal Studies 2030.

SECTION 1

The Environment at Risk



It would be pretty hard to live in Canada today without being aware of the importance of environmental issues. You may be involved in programs aimed at protecting the environment—perhaps by recycling things like cans and newspapers. But even if you're not, chances are you're concerned about the quality of the air you breathe, the water you drink, and the food you eat. You're likely also concerned about what our environment will be like for future generations.

This section will help you learn more about environmental issues by introducing you to some of the legal aspects of those issues. When you've finished the section, you should be able to identify different areas of environmental concern, explain traditional legal methods of dealing with environmental disputes, and describe the effects of several court decisions on environmental law.

Lesson 1: Environmental Hazards



The Environmental Crisis

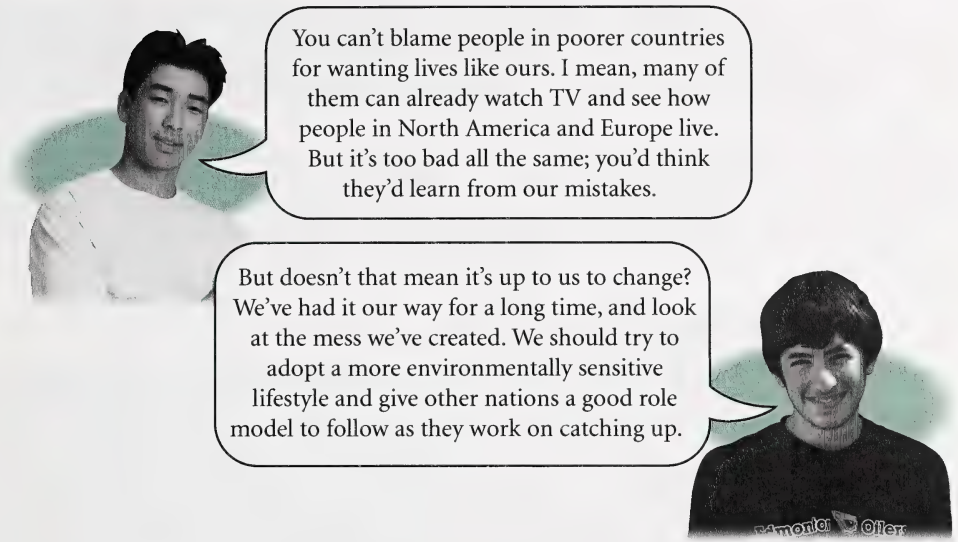
You've been brought up in a society very much concerned about the damage we're doing to the world in which we live. Our modern lifestyle, dependent on massive amounts of energy and other resources, driven by high consumer demand, and based on the idea that the economy must keep on expanding, has placed a tremendous amount of stress on our **environment**.

environment:
*everything
that surrounds
something or
someone*

We've come to realize in the last few decades that the world isn't a source of limitless resources. We've also come to realize that the ability of the environment to recover from the pollutants we constantly pump into it also has its limits—and we're clearly bumping up against them.

Ironically, despite this awareness, we seem to go right on treating the world the way we used to, as though there were no problem.

To make matters much worse, many of the poorer countries of the world, which traditionally have contributed relatively little to environmental concerns, are quickly catching up to western societies in consumption and pollution levels. Now that more and more people in highly populated countries like China are starting to drive cars, throw out disposable products, and live a lifestyle based on higher and higher consumption, the Earth's physical ability to cope will almost certainly be pushed beyond its capabilities.



1. How environmentally conscious are you? Take the short quiz that follows by giving yourself one point for each statement that describes things you—and members of your family—do.

I/we never litter.	
I/we take recyclable bottles and cans to the recycling depot.	
I/we regularly recycle things like newspapers, plastic, glass, and tin.	
I/we take things like dead batteries, used motor oil, and unused paint and solvents to a toxic-roundup site.	
I/we try to use products that are reusable rather than disposable—for example, lunch containers, coffee cups, and diapers.	
I/we turn all our vegetable scraps from the kitchen into compost for the garden.	
I/we make a point of turning out lights that aren't being used.	
I/we turn down the furnace at night.	
I/we walk, cycle, or use public transportation whenever possible rather than driving a car.	
I/we read labels on things I/we buy and try to get the most environmentally friendly products.	
I/we drive a car that's no larger than our needs require it to be.	
I/we encourage others to behave in an environmentally sensitive way.	

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

How well did you do? Of course, the chief purpose of this course isn't to encourage you to be more environmentally active in your own life; rather, it's to make you more aware of the legal aspects of environmentalism. Still, if the course does help you alter a few of your habits so as to decrease the stress you personally put on the world that sustains you, so much the better.

Going Further

Do **one or both** of the following:

- How environmentally active are you, your family, and your friends? Consider setting up a short survey asking your friends and family members questions about the steps they take to preserve the world they live in. You could begin with questions like those in the preceding quiz and then add more of your own. Give the survey to as many people as you can and collate the results. Write up your findings in a brief report of no more than a page.
- What steps has your community taken to recycle things like newspapers, magazines, cans, bottles, glass, and plastic? Do some research and try to discover about the activities of local recycling projects. If your community isn't involved in recycling (a situation more likely to exist in a small community than a larger one), what steps could you take to become environmentally active?

To get you thinking a bit more about environmental issues, read the following discussion about a situation that developed off Canada's coastline a few years back. Then answer the questions that follow.

In March of 1995, the Canadian authorities seized the Spanish fishing boat the *Estai* even though it was in international waters. Canada made the decision to seize the trawler because there was strong evidence that the crew were severely damaging the fish supply off Newfoundland's Grand Banks by catching fish far younger and smaller than those permitted by any regulations. The premier of Newfoundland branded the Spanish fishers "environmental criminals." The Canadian government, in return, was accused by the European Union Fisheries Commissioner of launching a "wave of terror" because of its apparently high-handed and warlike act.

This incident, which caught the attention of Canadians coast to coast, as well as people from countries throughout the European Union, served to underline the conflict between the laws and conventions that govern the relations between nations and the concern each nation has to protect its own resources and environment. The dispute officially ended when Canada and the European Union signed an agreement that set strict quotas on the number of fish (turbot) that could be caught annually and established a system whereby independent observers were to be placed on board all ships fishing off the Newfoundland coast to enforce conservation regulations.



sustainable development:
the use of natural resources that meets the needs of people today while conserving for the future



The *Estai* incident opened the eyes of many Canadians to the need for laws and regulations to enforce our environment. As a country heavily dependent on its natural resources, Canada has come to realize that it can't take those resources for granted. If they're exploited without any thoughts of conservation for future generations, ultimately they'll disappear. In fact, with modern harvesting and extraction technologies, the rate at which many resources are disappearing has become alarming. Yet the world needs food and other resources, and Canadians need the income provided by the jobs and sales provided by our resources. One important goal of environmental protection is, then, **sustainable development**—development that meets the needs of today without depleting resources that will be needed in the future.

2. The *Estai* incident underscores a serious problem involved in protecting resources in the ocean. Suggest a reason to explain why it's harder to control human activity in relation to resources at sea than on the land.
3. In your own words explain the expression *sustainable development*. Use an example—make one up if necessary—to illustrate your explanation.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Areas of Concern



Clearly our environment is at risk in many ways. Whether it's overfishing the turbot and cod stocks off the Grand Banks, polluting rivers with industrial wastes, creating a hole in the Earth's ozone layer with airborne chemicals, or raising global temperatures with "greenhouse gases," humanity seems hard at work destroying its very home. Of course, none of this is new to you, but it's impossible to overstress its importance if people are to have a decent quality of life in generations to come.



4. Before going on, take a few minutes and try to list as many environmental problems as you can think of; you can start with the three mentioned in the preceding paragraph. If you're working with a friend, brainstorm ideas together. See how many you can come up with.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.



The list you created for question 4 should have prepared you for your next reading; it goes through a number of broad areas where serious environmental concerns exist.

The reading that follows was taken from the fourth edition of Nelson Canada's *All About Law*. You'll be given a number of readings from this textbook as you work your way through this course. If, by any chance, your school has copies of this work, you might prefer acquiring one so you can read other material in the chapter "Law and the Environment."

The human "population explosion," combined with rising material expectations, have produced consumption rates that are rapidly depleting the world's supply of natural resources. Industries that use these resources produce chemical and biologically active **contaminants** on a vast scale. Indeed, there is hard evidence that pollutants have been affecting the ecosphere since the late nineteenth century.

Forests. The annual harvest of wood in Canada has been rising steadily. As a result, wilderness areas are disappearing at an increasing rate, and Canada is running out of old-growth forests. Reforestation practices, such as vast plantings of just one kind of tree for commercial purposes instead of replacing the variety of species that were cut, do not generate new forests. Moreover, questionable logging practices have contributed to the erosion of forest soils and the destruction of fish and wildlife habitats. The building of massive hydro-electric dams has caused the flooding of vast areas of forest land.

Soil. Valuable layers of topsoil in Canada are

being eroded by water and wind. The decline of organic matter in cultivated soil and the demands of modern agriculture have led to a dramatic increase in the use of chemical fertilizers, herbicides and pesticides. As a result, fragile ecological balances are being disturbed. In some areas, excessive irrigation has caused harmful accumulation of salts in soil.

Landfill sites are filling up rapidly with garbage. The situation is worsened by the growing presence of toxic substances and non-biodegradable materials, such as plastics, in domestic wastes. Moreover, seepage from these sites can contaminate ground water reserves that many Canadians depend on for drinking water.

Air. Vehicle exhaust and smoke and gas emissions from industries are choking the air with smog, aggravating respiratory problems of urban dwellers. Pollutants from waste disposal sites and manufactured products also contribute to air pollution. Global warming, ozone depletion, and acid rain are three concerns that stem from the pollution of the atmosphere.

Water. Pollution of streams and rivers by sewage and industrial wastes is making it increasingly difficult for communities to meet their needs for safe drinking water. Rivers and streams carry pollutants into lakes and coastal waters where they cause harm to local ecosystems.

Millions of fish have suffocated due to oxygen depletion. This fish-kill results from a process called *eutrophication*, in which high concentrations of nutrients, such as phosphates, stimulate excessive algae growth, resulting in a decrease of oxygen in the water.

The closing of public beaches and swimming areas has become common because of high coliform bacteria counts caused by raw or partially treated sewage.

Draining wetlands to accommodate urban growth and agriculture has resulted in the loss of wildlife habitats. Oil spills have fouled fragile seabottoms and shorelines. Contamination of river estuaries contributes to the decline in population of fish species already threatened by overfishing. In deep areas of the ocean, pollution results from the dumping of highly toxic substances. We are only now beginning to understand the dangers of this practice.

Scientists estimate that *acid rain*, caused by the burning of fossil fuels, has killed life in approximately 14 000 lakes and has harmed many thousands of other lakes in Canada. Acid rain is also harming Canada's forests, causing forest dieback in some areas.

Toxic Substances. Toxic contaminants that enter the food chain and eventually find their way into our bodies are causing increasing concern. These very dangerous substances, the by-products of industrial activity, include polychlorinated biphenyls (PCBs), dioxins, mercury, and heavy metals such as arsenic, lead, and cadmium. Scientists have linked human exposure to these substances to cancer, heart disease, damage to the central nervous system, birth defects, and learning disabilities. In many instances, the destructive effects are passed on from one generation to another.

Toxic compounds have already affected many wildlife populations causing thyroid dysfunction in birds and fish; decreased fertility in birds, fish, and mammals; decreased hatching success in birds, fish, and turtles; and unusual birth deformities in birds and fish.

5. Make a chart like the one that follows and fill it in with point-form notes based on the reading you've just completed. The chart has been started to give you the idea.

Areas of Environmental Concern	
Forests	<ul style="list-style-type: none"> • logging destroying old-growth forests • forest soils eroding • fish and wildlife habitat being destroyed • vast areas flooded by hydro dams
Soil	

¹ From *All About Law 4/E*, Student Text by GIBSON/GRANT/JARMAN/MURPHY. © 1996. Reprinted with permission of Nelson, a division of Thomson Learning: www.thomsonrights.com. Fax 800-730-2215

Air	
Water	
Toxic Substances	

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

Scary stuff, isn't it? You're probably already asking yourself why the government doesn't just establish some laws and put a stop to those activities that are degrading our environment. But, of course, it's nowhere near that easy. Against dangers to the environment have to be weighed things like people's need for jobs, housing, food, and all the products we use every day that are produced in ways that create toxic wastes.

The problem is greatly aggravated by the fact that even if Canada passes strict laws to regulate activities that can harm the environment, other countries may not follow suit. You've already seen the problem of policing fishing in international waters, but the fact is that environmental degradation is a global problem on all fronts. Our factories may be forced to control emissions, but if airborne pollutants waft across the border from the United States, we still have foul air. What's more, our factories would then have a financial disadvantage when competing with those American businesses—the cost of setting up and maintaining stricter pollution controls.

To learn more about global aspects of environmental issues, read the following material from *All About Law* (fourth edition). Then answer the questions that come after it.

Pollution does not respect national boundaries. Winds, ocean currents, and human transportation systems have carried pollutants to all corners of our planet. The crisis we face is of global dimensions. The stresses on the environment are becoming so great that the world's basic life-support systems may be on the verge of breaking down.

Ecologists have described rain forests as the "lungs of the world," due to their enormous capacity to take in carbon dioxide and release oxygen. Currently, these forests are being destroyed at an alarming rate—to supply industry with raw wood and to make land available for settlement and agriculture. Although rain forests cover only 7 percent of Earth's surface, they are home to 50–80 percent of the world's plant and animal species. More species become extinct each day.

The burning of wood wastes that often accompanies the destruction of rain-forest areas contributes to the atmosphere's already heavy carbon dioxide burden, which comes mainly from the use of fossil fuels. Many scientists believe that the rise in CO₂ levels is causing a *greenhouse effect*: increasing levels of carbon dioxide trap more heat in the atmosphere, resulting in a trend toward global warming.

This process is accelerated by rising levels of methane gas produced by a growing livestock population and the presence of chlorofluorocarbons (CFCs), which are found in refrigerators, air conditioners, and aerosol sprays. Some scientists predict that the average world temperature will rise by as much as 2°C to 5°C by the middle of the next century. A global warming trend would be of particular significance to Canada as it is thought that the greatest effects would be felt between 30 and 60° latitude. Coastal flooding, caused by a rise in the sea level due to melting of the world's ice caps, would displace huge numbers of people throughout the world and destroy large areas of valuable farmland.

In the early 1980s, British scientists, conducting atmospheric research in Antarctica, detected the first hard evidence of ozone depletion. They found that a massive hole had developed in the *ozone layer* over the South Pole. More recently, a much smaller hole has been found developing each spring over the North Pole.

Scientific studies have linked CFCs to the thinning of the ozone layer. Ozone blocks ultraviolet radiation from reaching Earth's surface. As the ozone layer becomes depleted, the occurrence of skin cancers and eye cataracts is expected to rise; phytoplankton, upon which all marine life depends, is expected to diminish. Lower yields of major food crops, such as wheat, rice, corn, and soybeans, are predicted as a result of reductions in photosynthesis, and it is thought that the immune systems of humans might be weakened.

Disasters

Disasters have heightened international concerns about the environment. The effects of a 1970 heavy-oil spill from the *Arrow* tanker in Chedabucto Bay, Nova Scotia, were still visible in 1995, 25 years later!

In 1989, the oil tanker, *Exxon Valdez*, ran aground at the entrance to Prince William Sound, spilling a full cargo of Alaskan crude oil. Although Exxon spent \$1.3 billion (U.S.) on clean-up operations, studies have shown that the effects of the spill are still being felt. Reproductive defects have been detected in sea birds and other aquatic life.

Another disaster occurred in 1993, when an American oil tanker sank off the Shetland Islands near Scotland. These are only three of hundreds of oil spills that occur around the world every year. Indeed, the U.S. National Academy of Science has estimated that 6 million tonnes of petroleum flood into the world's oceans every year, adding to an estimated 400 million tonnes of dissolved petroleum and 700 000 tonnes of tarballs that are already there.

On April 26, 1986, an explosion at a nuclear reactor in Chernobyl, Ukraine, triggered a nuclear meltdown. Over 11 tonnes of radioactive debris were released into the atmosphere, with catastrophic results. During the next 10 days, clouds from Chernobyl deposited contaminants from Scandinavia to Greece. Government authorities have declared over 2600 km² of land surrounding the ruined reactor an uninhabitable "Dead Zone." In the first eight years following the accident, over 8000 people died from radiation-induced diseases. One estimate puts the eventual toll at 39 000 cancer deaths alone. Abnormally high numbers of birth defects have also been reported.

It is clear that more than just the immediate disaster areas are affected, and high-profile disasters such as those mentioned above create a public awareness of environmental issues. If there is a positive side, it is that almost all environmental laws arise as a political response to the pressure of public awareness and opinion.

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6. In two or three sentences for each, explain the environmental problem identified by the following terms:
- a. the destruction of the “lungs of the world”
 - b. the *greenhouse effect*
 - c. the hole in the ozone layer

The Exxon Valdez



ecosystem: a dynamic system made up of living organisms and their non-living environment that interact as a unit

The preceding reading finished with a brief description of four famous environmental disasters that brought home to people all over the world just how vulnerable we are to accidents that affect the **ecosystems** on which we depend. Chances are you'd heard of at least one or two of these disasters already; probably the two best known are the nuclear meltdown in Chernobyl and the oil spill caused by the grounding of the *Exxon Valdez*. The latter event makes a good illustration of how quickly an environmental disaster can strike and the difficulty traditional laws have had in dealing with them. Looking at it in more detail may be jumping the gun a bit, but it should make you aware as you're about to begin Lesson 2 just how important it is to have laws adequate to deal with environmental calamities.

On March 24, 1989, the oil tanker *Exxon Valdez*, owned by the American-based, multinational Exxon Corporation, struck a reef in Alaska's Prince William Sound (a centre for some of Alaska's largest fishing fleets and a top tourist spot because of its natural attractions) leaking over 40 million litres of crude oil into the waters.

According to the record, the captain had been drinking alcohol prior to departure. At 11:25 p.m., he radioed the Coast Guard that he was trying to avoid ice. Soon after that, the Coast Guard lost the ship on its radar. At 11:50 p.m., the captain turned over control of the ship to the third mate (an unusual thing for a captain to do in a dangerous situation) and ordered him to make a right turn when parallel to Busby Island. The captain then returned to his cabin.

Just after midnight, the ship ran aground after failing to turn on time, and oil began spilling into the water. The captain returned to the bridge and stabilized the ship, thereby preventing more spillage. The Coast Guard and the Exxon Corporation were then contacted. About 3:30 a.m., Coast Guard investigators boarded the ship, and one investigator reported a “very intense” smell of alcohol on the captain’s breath.

The oil from the tanker eventually floated over 6700 square kilometres and contaminated 2000 kilometres of beach. Here are a few more statistics:

• oil spilled	over 41 million litres
• oil recovered	almost 10 million litres
• sea birds killed	33 126
• eagles killed	138
• otters killed	980
• people involved in clean-up	12 000
• vessels used in clean-up	1385
• lawsuits filed against Exxon	145
• cost of clean-up to Exxon	\$1.28 billion



The captain was charged with operating a ship while under the influence of alcohol, with reckless endangerment, and with negligent discharge of oil. A judge set his bail at \$500 000. He was locked up overnight. The next day, another judge ruled that his bail was “unconstitutionally excessive” and reduced it to \$25 000. The captain’s charges carried a combined maximum penalty of 27 months’ imprisonment and a \$10 000 fine.

7. Now try answering the questions that follow based on this case.

- a. The captain was charged in a U.S. court with what is called a misdemeanor offence—a relatively minor crime.

(1) Suggest a reason to explain why this would be the case.

(2) Why do you think the first judge set the bail so high for a misdemeanor?

- b. After this incident, the Law Reform Commission of Canada recommended that a provision be added to our *Criminal Code* making environmental damage an offence. Here is a possible wording:

Disastrous Damage to the Environment.

Everyone commits an offence who recklessly causes disastrous damage to the environment.

- (1) If this provision were included in the *Criminal Code*, and if the oil from the *Exxon Valdez* had polluted the coastline of British Columbia, could the captain be convicted under it? Explain your answer.

- (2) Canada has a category of crime much like the misdemeanors of the United States. Our minor crimes are known as **summary conviction offences**. If the suggested provision were included in the *Criminal Code*, do you think it should be a summary conviction offence or a more serious, **indictable offence**? Explain your answer, along with the maximum sentence you think should be imposed.



summary conviction offence: a relatively minor criminal offence that is tried quickly

indictable offence: a serious criminal offence

(3) Would you like to see a provision like this in the *Criminal Code*? Give reasons for your answer; feel free to suggest alternative wordings.

- c. The judge in the *Exxon Valdez* case commented, “We have a man-made destruction that has not been equalled, probably since Hiroshima.” Explain this comment.
- d. Suggest ways in which disasters like the *Exxon Valdez* oil spill could be prevented in future.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

To complete your brief look at the *Exxon Valdez* disaster, you should note that the captain was fired by Exxon and stripped of his licence. It was later restored, but he was unable to find employment as a captain. At the trial, he was convicted of a single misdemeanor—the negligent discharge of oil. This verdict was reversed on appeal.

Canada’s Law Reform Commission, which recommended making negligent environmental damage a criminal offence, was disbanded soon after this incident, and its work was taken over by the federal Department of Justice. The recommended provision of crimes against the environment has never been added to the *Criminal Code*; there’s nothing in the *Code* regarding environmental damage.



Something bothers me here. I mean, sure the captain has some responsibility for what happened, but what about Exxon? Did they know he had a drinking problem and let him take command of the ship anyway?

Good question. As the captain’s employer, Exxon was legally liable for his actions while on the job; and it’s a fact that he was negligibly permitted to command the ship while obviously intoxicated. Exxon was also accused of being very unprepared for dealing with an environmental emergency. Establishing liability in situations like this can be very difficult. More on that later.



In this lesson you’ve been introduced to some of the areas of environmental concern faced by our society. Probably little here was new to you, but it’s necessary to have a good grasp of the scope of environmental problems before beginning to look at the legal aspects of the issues. You’ll begin to examine those legal aspects in the next lesson.

Going Further

Do **one or both** of the following:

- As you work through this course, keep an eye out for any environment-related stories you learn about in the news. Pay special attention to the legal aspects of any stories you find. As you go through the course, you should find these stories make the material you'll be studying come to life and seem more relevant to what's actually going on around you.
- Organizations devoted to protecting the earth's environment—or some aspect of it—play an important role in the development and the application of environmental law. Use an Internet search engine to learn about the activities of environmental groups—Canadian groups in particular. You could begin by checking out these organizations:
 - Greenpeace Canada: <http://www.greenpeace.ca/>
 - the World Wildlife Fund Canada: <http://www.wwf.ca/>
 - the Alberta Wilderness Association: <http://www.albertawilderness.ca/>
 - the Canadian Parks and Wilderness Society: <http://www.cpaws.org/>
 - the Western Canada Wilderness Committee: <http://www.wildernesscommittee.org/>
 - the Sierra Club of Canada: <http://www.sierraclub.ca/>

Note: You'll be learning more about groups of this sort in Section 3.



Suggested Answers

1. How environmentally conscious did you turn out to be? If your score is nine or over, give yourself a pat on the back. If you scored between six and eight, you're sensitive to environmental concerns, but you should work at becoming a bit more active in doing your part to protect the world that sustains you. If you scored under six, you have some work to do. Now is a good time to get started.
2. It's usually clear which government has control over what areas of land; but at sea, things are different. Most of the world's oceans are considered international waters, so no one country has the right to enforce its laws over them. Countries with seacoasts can control the water off those coasts, but there can be disagreement over just how far these *territorial waters* extend. In the case of the *Estai*, Canada claimed the right to enforce its laws farther out at sea than other countries were willing to recognize.
3. *Sustainable development* is the term used for the idea of using natural resources in such a way as to meet the needs of today's society while conserving them for use by future generations. A logging company that harvests trees selectively and plants new ones to replace those it takes is practising sustainable development. A company that clear-cuts a forest and abandons it isn't.
4. How long a list were you able to make? The reading you're about to do runs through a good many areas of concern; as you read, compare your own list to the issues mentioned in this discussion.

5. Charts will vary somewhat. Compare yours with the one that follows.

Areas of Environmental Concern	
Forests	<ul style="list-style-type: none"> • logging destroying old-growth forests • forest soils eroding • fish and wildlife habitat being destroyed • vast areas flooded by hydro dams
Soil	<ul style="list-style-type: none"> • topsoil eroding • use of chemical fertilizers, herbicides, and pesticides increasing • ecology being disturbed • irrigation causing salt buildup
Air	<ul style="list-style-type: none"> • emissions from vehicles and industry polluting air • more respiratory problems occurring • global warming, ozone depletion, and acid rain all resulting
Water	<ul style="list-style-type: none"> • sewage and industrial waste polluting water • oxygen depletion killing fish • water becoming too polluted even to swim in • draining wetlands destroying wildlife habitat • oil spills fouling water and shorelines • overfishing and contamination reducing number of fish • dumping of toxic substances at sea causing pollution • acid rain destroying life in lakes
Toxic Substances	<ul style="list-style-type: none"> • toxins produced by industry getting into food chain and making people sick (results include cancer, heart disease, damage to nervous system, birth defects, learning problems) • toxins also damaging wildlife (results include thyroid problems, birth defects, decreased fertility)

6. a. Rainforests are sometimes called the “lungs of the world” because they absorb so much carbon dioxide and release so much oxygen. As these forests are destroyed for their wood and to make way for farms and towns, this function is damaged and the amount of CO₂ in the atmosphere is potentially increased. The destruction of the rainforest is also robbing many of the world’s plant and animal species of their only home.
- b. The *greenhouse effect* is the term often used to describe the trapping of heat in the atmosphere by the buildup of carbon dioxide. The CO₂ is produced chiefly by burning fossil fuels, but the greenhouse effect is aggravated by such activities as raising livestock, which produces great amounts of methane, and the use of CFCs in things like refrigerators, air conditioners, and aerosol sprays. (In recent years, however, the use of CFCs has decreased dramatically due to stiffer controls.) As the Earth warms up, sea levels could rise (as polar icecaps melt), flooding coastal areas. Weather patterns would also likely be affected; many areas that today are productive farmlands could become deserts (a point that isn’t mentioned in the reading).

- c. In the upper atmosphere of Earth, a layer of ozone exists that protects us and other living things from the sun's ultraviolet rays. Holes in this layer have been discovered over the poles, and it's believed that the use of chemicals called CFCs (chlorofluorocarbons) is breaking down the ozone layer. Some of the consequences we can expect are more skin cancer and eye cataracts, weakened immune systems, and poorer crop production.
7. a. (1) The laws were made before disasters of this magnitude were foreseen. Negligent discharge of oil wasn't considered a serious offence before gigantic tankers began breaking up and discharging their contents into the water.
- (2) Though the crime was technically minor, the judge realized that the damage involved was horrific. And, no doubt, the judge was also concerned the captain was operating the ship while intoxicated. Therefore, he set the bail very high.
- b. (1) Yes, he probably could be convicted, provided that the Crown prosecutor (a lawyer employed by the government to prosecute those accused of criminal offences in the courts) could establish that he had operated the tanker in a reckless manner.
- (2) Answers will vary. It's likely that, given the magnitude of disasters like the *Exxon Valdez* spill, you thought the offence should be indictable. Actually, there's a third category of criminal offences in Canada, called *hybrid* offences. With these offences, the Crown can decide to proceed by way of indictment if they're serious or by summary conviction if they're minor. Perhaps this suggested addition to the *Criminal Code* might be most appropriately categorized as a hybrid offence.
- (3) Answers will vary. Were you able to present clear, defensible reasons? Do you foresee any dangers in treating people guilty of such offences as criminals?
- c. As you doubtless know, the Japanese city of Hiroshima was where one of two American atomic bombs was dropped near the end of World War II. The damage to human life and the environment around the city created a whole new standard with which to judge humanity's destructive capabilities.
- d. Answers will vary. Suggestions could range from stricter drug and alcohol tests to improved radar equipment. Most students, however, suggest stiffer penalties and laws more in tune with today's realities.

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Lesson 2: Common-Law Remedies

Were there any questions left in your mind after reading about the *Exxon Valdez* in the preceding lesson? Here are two things you may have been wondering while reading about the disaster:

- Can people who make their living in fishing and tourism where the ship ran aground take Exxon or its captain to court for lost income?
- What if there had been no negligence on the part of the captain but a freak storm had driven the ship ashore? Would Exxon still be held **liable** for the damage done?

liable: legally responsible

To answer questions like these, you need a bit of background in the way the law works. If you've taken other Legal Studies courses, you may already have this background. If so, don't spend too much time on the discussion that follows (but do read it over to make sure you haven't forgotten anything). If this is your first Legal Studies course, this lesson will fill you in on what you need to know.



Common Law Versus Statute Law

When you think of laws, chances are you think of bills passed by a governing body like the Parliament of Canada or the Alberta legislature. Laws of this sort are called **statutes**; an example of such a statute is Canada's *Criminal Code*. Statutes can be passed by both the federal and provincial levels of government. The *Criminal Code* is a federal statute; it's the law across Canada. By contrast, Alberta's *School Act* is provincial; it applies only in one province.

statute: a law passed by a governing body

precedent: a court decision that lower courts must follow when making decisions in similar cases

common law: the body of law that has gradually developed as judges have made decisions in cases they've heard

While most people today think of statutes as laws, the fact is that traditionally most of the law that's governed people in the English-speaking world hasn't been created by bills passed by a government. Rather, most of our traditional law has been created bit by bit as judges have decided on court cases that have come before them. These decisions become **precedents** that judges in lower courts have had to follow when similar cases have been brought before them. The huge body of legal decisions that have been created in this way is usually referred to as the **common law**, though it's sometimes also called *case law* or *judge-made law*.



repeal: to
withdraw a law

legislators: the
people elected to
govern a country
or some part
of it (such as a
province)

Common law and statute law exist side by side today. If a statute is passed, it takes priority over the common law. But if the statute is **repealed**, we instantly fall back upon the old common-law principles. And, of course, **legislators** can't anticipate everything when they write up a new statute; so sooner or later it will be up to judges trying individual cases to decide just how the statute should be applied. This, in turn, creates a whole new body of case law based on the statute—and so the cycle continues.

1. Identify each of the following as an example of the common law or of statute law.
 - a. Alberta's *Residential Tenancies Act* sets a limit on how much a landlord can charge a tenant as a security deposit.
 - b. The Supreme Court of Canada rules in the case *Dickason v. University of Alberta* that an employer can negotiate a mandatory retirement age for its employees.
 - c. The *Controlled Drugs and Substances Act* makes the trafficking in narcotics illegal in Canada.
 - d. The House of Lords (the highest court in Great Britain) rules in the case *Donoghue v. Stevenson* that manufacturers are liable for harm their products cause those who use them in the manner in which they were intended to be used.
 - e. Alberta's *Human Rights, Citizenship and Multiculturalism Act* makes it illegal to discriminate against employees on the basis of their gender.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Public Law Versus Private Law



Crown prosecutor: a
lawyer employed
by the government
to prosecute
those accused of
criminal offences

Have you noticed that in some situations it's the public authorities who prosecute a supposed wrongdoer in the courts while in other situations private citizens sue each other in court? For instance, if you're caught driving dangerously, the police will charge you with an offence and a **Crown prosecutor** will make the case against you in court. By contrast, if you carelessly back your truck through your neighbour's fence and prize petunia bed, there's a chance your neighbour will sue you for financial compensation.

public law: the branch of law that governs the relations between the state and private citizens

private law: the branch of law that governs the relations between individuals

criminal law: the branch of public law that sets out certain acts as crimes and punishes those acts

civil law: private law

The distinction illustrated here is that between **public law** and **private law**. Public law involves the relationship between individuals and the state; private law involves the relationship between individuals. The best-known type of public law is **criminal law**. If you commit a criminal offence, it's the public authorities who will prosecute you, not your next-door neighbour.

Private law is also known as **civil law**, and that's the term you'll be encountering most in this module. Whenever an individual, a group of individuals, or an organization sues another individual, group, or organization, this is a civil case. When the public authorities are involved, it's public law—most often criminal law—that's at work.

2. What follows are examples of court cases. Tell whether each is a criminal or a civil case.
- a. Mr. Henderson takes Ms. Jorgensen to court when she breaks her employment contract with him.
 - b. Mr. Haliday sues Miklos when Miklos writes (untruthfully) in the local newspaper that Mr. Haliday is a neo-Nazi sympathizer.
 - c. Jared ends up in court on a break-and-enter charge.
 - d. Marissa takes Landon to court for trespassing when she catches him hunting on her land.
 - e. Mario and Lise find themselves in court for possession of marijuana for purposes of trafficking.
 - f. The FunToy Manufacturing Company is sued by a group of parents whose children were harmed when parts of their Cuddle-Me dolls broke off in their mouths.



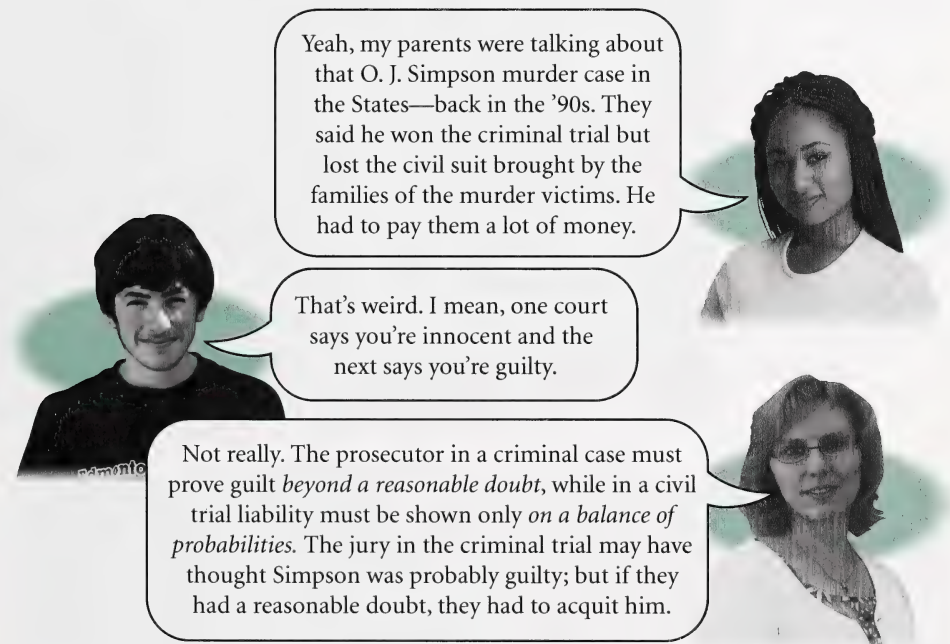
Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



When you're presented with an actual case study to read, you can tell right away whether it's a civil-law or public-law case. A case titled *Smith v. Jones* is clearly a civil action; someone named Smith is suing someone named Jones (the *v.* stands for *versus*). Public (including criminal) cases have titles like *R. v. Jones*. *R.* stands for *Rex* or *Regina*—Latin for *King* or *Queen*. That means it's the public authorities who are prosecuting the accused.

It's important to understand that sometimes people commit acts that can result in both a civil lawsuit and a criminal prosecution. For example, Mr. Batiuk runs down Josephine in his car while she's crossing the road at a crosswalk. He's intoxicated at the time. Josephine has to be transported to a hospital, she misses several weeks of work, and she accumulates large medical bills. Mr. Batiuk is charged by the police for impaired driving, and Josephine files a civil lawsuit against him in which she sues him for \$750 000.

The criminal case (for impaired driving) will be prosecuted by a Crown prosecutor in the Provincial Court of Alberta; if convicted, Mr. Batiuk is likely to pay a large fine, have his driver's licence suspended, and pay his lawyer a fee likely amounting to several thousand dollars. Meanwhile, the civil case will proceed in the Court of Queen's Bench; and, if he's found liable, the court will require Mr. Batiuk to pay Josephine money to compensate her for things like her expenses, her lost wages, her legal fees, and any pain and suffering she's undergone because of the accident. The criminal case would be heard first, followed by the civil one.



accused: a person charged with a criminal offence; defendant

defendant: the party being sued in a civil suit; the party charged with an offence in a criminal case

damages: money awarded a plaintiff by a court to compensate for a wrong suffered

plaintiff: the party bringing a civil suit against another party

injunction: a court order directing a person not to do (or sometimes to do) something

Another difference—and one you've probably already noted—between criminal and civil cases lies in the types of remedy the court uses to set a wrong right. An accused found guilty in a criminal trial will likely go to jail, pay a fine, or do community service. The objective is to punish the wrongdoer, to deter others, to protect society, and/or to rehabilitate the criminal.

By contrast, a **defendant** found liable in a civil suit will ordinarily be ordered to pay **damages** to the **plaintiff** to compensate that person for any harm suffered. Sometimes, as you'll see, the defendant will be ordered by the court to stop doing whatever it is that's caused the harm. This is called an **injunction**.

The chart that follows gives you a snapshot comparison between criminal and civil law. Use the chart to answer the questions that follow it.

COMPARISON BETWEEN CRIMINAL AND CIVIL LAW

	Criminal/Public	Civil/Private
Parties Involved	Crown attorney v. accused or defendant	plaintiff v. defendant
Grounds/Reason	laying of criminal charge to determine innocence or guilt	resolving a dispute
Purpose of Action	to punish offender	to compensate victims
Onus of Proof	on Crown attorney	on the plaintiff
Burden of Proof	beyond a reasonable doubt	balance of probabilities
Result of Action	accused "guilty" or "not guilty"	defendant liable or not liable
Action if Guilt or Liability Found	defendant is sentenced	plaintiff is awarded some compensation or remedy

3. a. The plaintiff in a civil trial corresponds to the _____ in a criminal trial, while the accused in a criminal trial corresponds to the _____ in a civil trial.
- b. What action results if liability is established in a civil case?
- c. What is the purpose of a civil action (a civil case)?
- d. What is the result of a criminal trial?
- e. What are the grounds (or the reason) for trying a civil case?
- f. On whom does the onus of proof (the responsibility of proving) rest in a criminal case?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

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Tort Law

tort: a civil wrong other than a breach of contract

slander: to utter untrue statements that damage another's reputation

Enough legal distinctions for a while? Actually, before discovering how all this applies to environmental law, it's necessary to take a quick look at one particular area of civil law—the law of torts.

It's really quite easy to understand what a tort is. Basically, a tort is any civil wrong—a wrong for which one individual might take another to court—with the exception of a contract dispute. If you drove over your neighbour's mountain bike, if you **slandered** someone, if you trespassed on another's property, if you assaulted someone, if your pet anaconda ate your neighbour's dog, if you caused someone an injury by carelessly neglecting to shovel your sidewalk—in all these cases a court might find that you had committed a tort. In some of them—for instance, in the case of assault—you might be guilty of a criminal offence as well.



4. Turn back to question 2. Which of the civil cases listed there involve torts?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Okay, now that you understand a bit about the common law and you know what torts are, it's time to see how laws of this sort have traditionally been used to combat environmental problems. The reading that follows will give you a general idea. Be aware, however, that as you read you'll likely come upon a few things you won't entirely understand. Don't worry; they'll be explained shortly. When you've finished the reading, answer the questions that follow.

A tort is a civil wrong or injury, other than a breach of contract, for which the injured party or plaintiff may seek damages from the wrongdoer. In some situations, the plaintiff may apply to the courts for an injunction to prevent anticipated harm or to end a continuing wrong. Tort law, in its capacity to protect private rights, can be and has been used to protect the environment.

Consider the example of a pulp mill that is sued successfully by a group of farmers for interfering with their right to unpolluted water. The damages awarded will compensate the plaintiffs for any loss or harm, thus protecting their private interests. The damage award may also act as a deterrent to other pulp mill owners.

... torts include negligence, private and public nuisance, trespass to land and to people, and strict liability. Some situations involving

environmental abuse also result in civil suits. In *Kerr et al. v. Revelstoke Building Materials Ltd.* (1976), noxious substances, fly ash, and sawdust from a nearby timber mill forced Mr. and Mrs. Kerr to close their motel. They sued in trespass and were granted \$30 000 in damages. In another case, *Friesen et al. v. Forest Protection Limited* (1978), Mr. and Mrs. Friesen were caught in a cloud of a pesticide being sprayed by an airplane on a neighbouring field. They sued in trespass and nuisance. The court awarded them \$1328.20 plus their legal costs. Not all civil suits involving environmental abuse are successful, however.

There are several advantages to seeking tort-law remedies to environmental disputes. Individuals may act privately against polluters without having to persuade the government to act. Also, the courts will order that successful

plaintiffs be reimbursed for losses suffered. Finally, it may be possible to obtain a permanent injunction to stop a polluter.

However, there are also disadvantages. The legal costs of bringing a civil action are very high. The expense of providing expert witnesses, who are often required in environmental cases, is prohibitive for most individuals. The length of time before a case can be brought to trial may be unacceptably long. The requirement that a plaintiff have a property interest in the land being affected by pollution denies the use of civil remedies to many persons concerned with protecting the environment.

It is also often difficult to prove that a polluter's activities are directly linked to the harm and that such harm was reasonably foreseeable. For example, it may be difficult to show that a

causal link exists between cancer, which may take years to develop after exposure to a contaminant, and emissions from a particular factory. Similarly, legal problems are created by the fact that environmental damage is usually the result of a combination of actions of many individual tortfeasors (wrongdoers) over considerable time.

Perhaps the greatest limitation is that the most widespread pollution problems—especially those that are global in nature—cannot be addressed effectively through the common law. Problems caused by the greenhouse effect and ozone depletion cannot be solved by private individuals claiming in the courts that they are the victims of torts. These problems require governmental action and international cooperation.

5. As you've learned, the area of common law known as tort law involves one individual, or a group of individuals, taking another individual or group to court. The objective can be to get financial compensation for a harm suffered or to force the defendant to stop doing something (or, in some cases, to do something). Using tort law to attack environmental problems has both advantages and disadvantages. Make a chart like the one that follows (only make yours deeper) and fill it in from the reading you've just completed.

Tort Law and Environmental Disputes	
Advantages	
Disadvantages	

6. Basing your answer on the information in your chart, explain why a legal weapon stronger than the law of torts is needed to fight today's environmental battles.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

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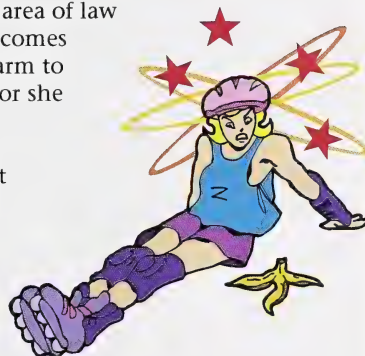
In your reading you were told that “. . . torts include negligence, private and public nuisance, trespass to land and to people, and strict liability.” However, the reading doesn’t explain in any detail how these different types of torts have been applied to environmental disputes. What follows will make this a bit clearer.

Negligence

negligence: the failure of a person to use reasonable care that results in an injury or loss to another

The greatest amount of tort law is concerned with the area of law known as **negligence**. Basically, the law of negligence comes into play whenever one person’s carelessness causes harm to another. A plaintiff can win a negligence lawsuit if he or she can convince a court of three things:

- The harm done to the plaintiff was a direct result of the defendant’s actions.
- The defendant acted without reasonable care.
- The harm done to the plaintiff was reasonably foreseeable.



A problem with using the law of negligence in environmental disputes is that it can be hard to prove that the actions of a polluter, for instance, are the direct cause of the harm done to a plaintiff. If a plaintiff living near a sour-gas well, for example, develops asthma, the fumes from the well may or may not be the cause. Who can say? It can also be difficult to prove that the harm was reasonably foreseeable. Is it reasonable for farmers spraying their crops to foresee that 30 years later a neighbour would develop cancer from the chemicals? For these reasons, negligence law hasn’t been too successful in fighting environmental battles.

7. Vivian has noticed that ever since a pulp mill was built upstream from her farm, the rate of stillborn calves she’s seeing in her herd has doubled. What would Vivian have to prove in court (on a balance of probabilities) if she wants to win a case in negligence?

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

Nuisance

nuisance: one party’s unreasonable interference with the right of another party to make use of his or her property

Nuisance has generally been more successful than negligence as a means of using tort law to win battles with polluters. Basically, **nuisance** occurs when one party uses his or her land in a manner that’s unreasonable and that interferes with neighbours’ enjoyment and use of their land. This can occur either deliberately or by accident. Nuisance can be of two types: private and public.

To learn more about the use of nuisance in environmental law and to discover the difference between private and public nuisance, read the selection that follows. When you’ve finished this reading, answer the questions that come after it.

The tort of nuisance is closely related to the tort of trespass. Nuisance involves one person's unreasonable use of land, which interferes with the enjoyment and use of adjoining land by other persons or a community. While trespass is always an intentional tort, a nuisance may be intentional or unintentional. Trespass laws protect the possession and use of property, while nuisance laws protect the quality of that possession and use. For example, if a farmer enters her neighbour's property without permission and without reason, she is guilty of trespass to land. If the same farmer sprays her fruit trees and the spray drifts onto a neighbour's property, causing him to fall ill, the neighbour can claim damages for nuisance.

Nuisance has gained prominence in recent years because society has become increasingly concerned about environmental pollution. Growing awareness of environmental problems has resulted in increased government concerns and regulations. Local zoning bylaws attempt to keep land for industrial and residential use some distance apart, in the best interests of both groups. Despite these laws, a citizen still has the right to take civil action. Every occupier is entitled to make reasonable use of his or her property. It is a matter for the courts to determine what is reasonable and to balance that right against the rights of other occupiers. Courts should only become involved when an excessive use of property causes inconvenience beyond what is reasonable for occupiers in the vicinity.

The courts have recognized two basic forms of nuisance—private and public.

Private Nuisance

Private nuisance laws recognize everyone's right to the normal use and enjoyment of their property, free from harmful or unreasonable interference. Compensation will not be awarded for occasional minor annoyances; the harm must be serious and continue for some time. One golf ball hit into a person's yard from a neighbouring country club is an annoyance; golf balls hit regularly into the same yard are a nuisance.

The neighbourhood in which the nuisance occurs must be considered by the courts. What

is acceptable in an industrial area will not be accepted in a residential or tourist area. Zoning bylaws often define the permitted standards. However, even a defendant conducting business within the bylaws may be held liable for nuisance, if it is excessive.

Another factor to consider in the case of business activities is the benefits each brings to the community. Canada's many pulp and paper mills, for example, produce necessary goods and employ numerous people. The resulting pollution and unpleasant odours, however, constitute nuisances. Courts must balance the reasonable use of land by one person or business with the nuisance it creates and the decrease in enjoyment for neighbours or the entire community. How will a court injunction forcing a company to stop its operation affect the community? Should the court award damages for the nuisance, but allow the defendant's activity to continue because of its value to the community? The benefit of a given business to the community may result in a more lenient judgment. However, the fact that a particular activity is valuable does not necessarily allow the business to create a containing nuisance.

Nuisances need not be tied to environmental concerns. Picketers who unlawfully carry protest signs outside the entrance to a hospital or a factory are a nuisance as they interfere with the free movement of other people in and out of these buildings.

Public Nuisance

Public nuisance refers to a small group of actions that interfere with the rights of the general public. Examples include blocking off public waters, highways, or roads and polluting of public waters with insecticide or oil spills. As long as a significant number of people are affected, it is unnecessary to prove that every member of the public has been harmed.

Actions for public nuisance are usually brought by a government official, often the provincial attorney general, on behalf of the public. The intent is to prevent defendants from being sued separately by each person and to reduce actions for petty or minor losses. A private citizen who can show special injury above and beyond that suffered by the general public may also sue,

however. The usual award in a successful action for public nuisance is either the issuing of an injunction or the payment of damages.

Defences to Nuisance

Two main defences to the tort of nuisance exist: legal authority and prescription.

Legal Authority

By law, certain industries are given the legal right to emit a reasonable amount of smoke, noise, and effluent without being liable. Similar regulations apply to aircraft and vehicles requiring sirens. In passing such legislation, the government attempts to balance the right of society to enjoy land against the need of industry to generate pollution in the course of providing products and services. However, if a business exceeds the level considered reasonable in law, a nuisance action may be brought against it.

Prescription

A person may acquire the right to continue using another's property by **prescription**. This occurs if the land has been used openly, continuously, and in the same manner without dispute for at least 20 years. It is assumed that if neighbours have accepted the nuisance for 20 years without complaining or taking legal action, they have given in to its presence and have accepted it. Suppose, for instance, that the eaves on the Fournier home discharge rainwater onto the neighbouring Schultz property every time there is a heavy rain. If the Schultz family does not make any complaints to the Fourniers about this problem for a period of 20 years, the Fourniers are legally able to assume that no nuisance is being created. They have acquired the right by prescription to allow this situation to continue without fear of legal liability.

1

private nuisance:
a nuisance
involving only a
few people

public nuisance: a
nuisance involving
a large number of
people or all the
residents of an area

8. Explain in your own words the difference between the terms **private nuisance** and **public nuisance**. In your answer, identify which term you think has probably been a more successful tool in combating environmental problems. Give your reasons.
9. The Estradas, who live on an acreage, are upset because every spring Mr. Hoffmann, the farmer next to them, puts herbicides on his crops. Mr. Hoffmann is careful to spray on calm days, but the Estradas can still smell the chemicals, and they're worried about the effects on their health.
 - a. If the Estradas were to sue Mr. Hoffmann on the grounds of nuisance, would this be a case of public or private nuisance? Explain your answer.
 - b. Identify **two** remedies the Estradas might seek in taking Mr. Hoffmann to court.
 - c. Now identify and explain **two** defences Mr. Hoffmann might use to combat the Estradas' claims.
 - d. From what you've read about nuisance law, what chances do you think the Estradas would have for a successful lawsuit? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

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Nuisance is a useful ground for fighting environmental cases in limited situations. Such things as industrial emissions, factory wastes, smoke, toxic fumes, and noise are all examples of environmental pollutants that can be fought through tort law in cases based on nuisance.

Trespass

trespass: to go onto another person's land without permission

Your last reading mentioned that nuisance is similar to the tort of **trespass**, though there are differences. For one, trespass is always a deliberate action; and for another, it concerns more directly a physical presence on another's property. Trespass normally involves one or more people actually going onto another's property without the consent of the owner; but in recent years, there have been some tort cases where trespass has been successfully used to combat pollution.

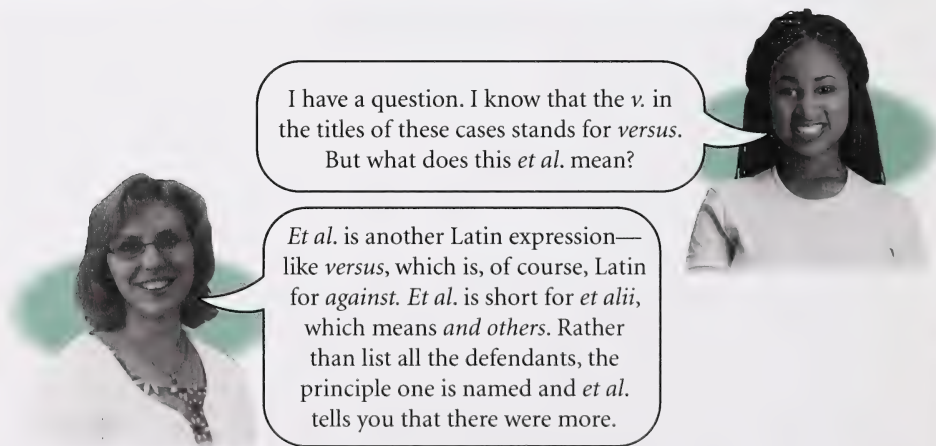


10. In the reading you did just before question 5, you read about two of these cases:

- *Kerr et al. v. Revelstoke Building Materials Ltd.* (1976)
- *Friesen et al. v. Forest Protection Limited* (1978)

Go back to that reading; then briefly explain what each of these cases was about and what the ruling of the court was in each case.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



I have a question. I know that the *v.* in the titles of these cases stands for *versus*. But what does this *et al.* mean?

Et al. is another Latin expression—like *versus*, which is, of course, Latin for *against*. *Et al.* is short for *et alii*, which means *and others*. Rather than list all the defendants, the principle one is named and *et al.* tells you that there were more.

Though trespass can be used to win civil cases involving pollution, it's by no means always successful. The situation has to fit the criteria for trespass exactly or the case will fail. The depositing of the pollutant in question has to be direct; this means that pollutants wafting in on the breeze from a distance or carried to your land by tidal water don't qualify.

Strict Liability

Some torts, such as trespass or assault, have to be deliberate actions. Others involve actions that unintentionally cause others harm—as long as the plaintiff can convince a court that the defendant acted in a negligent manner. There is a kind of tort, however, that's committed unintentionally but for which the person who commits it will be held liable by a court even if there was absolutely no negligence involved. This is the area of tort law called **strict liability**.

strict liability:
liability that
results when a
legal activity
causes harm to
another even if
no negligence was
involved

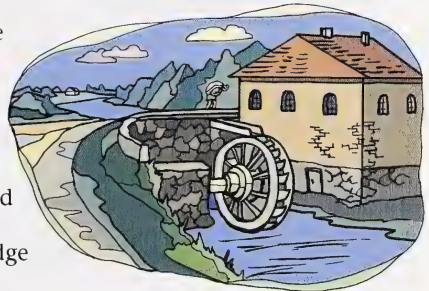
Let's say you own a wild animal (an animal not ordinarily kept as a pet and one that has a potential to harm people) and that animal escapes. According to the common-law principle of strict liability, a court will likely find you liable for any harm the animal does even if you were in no way negligent. This reflects the belief that if you do something so inherently dangerous, you should be liable for any harm that results whether or not you actually acted carelessly.



The principle of strict liability may strike you as unfair. You may think that if you aren't negligent and don't deliberately try to harm someone, you shouldn't be punished. But remember that the basis of tort law isn't so much to punish the guilty as to make restitution to those harmed by the actions of others. If you own a dangerous animal that mauls someone, or if your company stores explosives that are accidentally set off, killing an innocent bystander, you will be held strictly liable and will have to make restitution.

The idea of strict liability in tort law was introduced by the famous British case *Rylands v. Fletcher* (1868). This case established the principle that anyone occupying land is strictly responsible for dangerous substances that are brought onto that land and that then escape. Here's a condensed version of what this case was about.

The plaintiff, Fletcher, ran a coal mine next to the property of the defendant, Rylands. Rylands, in turn, owned a mill and built a reservoir to supply water for it. The reservoir was properly built, but what no one knew was that old mine shafts existed under the land in the area. One day, the reservoir broke through these old shafts and ended up flooding Fletcher's mine next door. In finding Rylands liable for the damage, this is what the judge had to say:

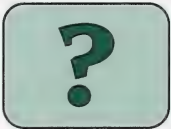


We think that the true rule of law is that the person who, for his own purposes, brings on his lands and collects there and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is . . . answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was an Act of God, but that is not the case here. The person . . . whose mine is flooded by the water from his neighbour's reservoir . . . is damnified without fault of his own.

Today, this principle has been expanded to include such things as harm caused by chemicals escaping from factories or sewage leaking from drainpipes.

Now answer these questions.

11. In your own words, explain the principle of strict liability. In your answer, illustrate how the principle can be applied to environmental issues.
12. In the case *Rylands v. Fletcher*, the judgement says that the defendant "... can excuse himself by showing that the escape was an Act of God, but that is not the case here."
 - a. Suggest what you think the judge meant by the expression *an Act of God*?
 - b. Why wouldn't the judge have considered the situation in this case an Act of God?
 - c. Suppose that in this case the defendant had taken the trouble to ensure that there were no old mine shafts or anything of that nature near his reservoir, and he built the reservoir according to the highest safety standards. Then an earthquake damaged the reservoir and flooded the plaintiff's mine. According to the principle of strict liability enunciated in the judgement, would the defendant have likely been found liable? Explain your answer.
13. What do you think of the legal principle of strict liability? Is it fair? Give reasons for your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

As you've seen, the principle of strict liability can be used when an individual or a company causes environmental damage by doing such things as storing toxic substances, which then escape onto neighbouring properties. Again, however, as in all attempts to tackle environmental problems with tort law, the application of the principle is limited, and direct harm to the plaintiff must be proven.

What's more, the defendant may be allowed to use the defence of **due diligence**—that he or she took reasonable precautions to prevent the damage but that an **Act of God** caused the harm regardless.



due diligence:
the defence that the defendant took all reasonable precautions but that some harm resulted anyway

Act of God: an unforeseeable event brought about by natural causes—such as an earthquake or a tornado

14. In the Nova Scotia case of *MacDonald v. Sebastian* (1988), the plaintiff had rented a home from the defendant; but soon after moving in, Mrs. MacDonald and her children became sick. Suspecting the water, Mrs. MacDonald had it tested; she discovered arsenic levels 7.4 times higher than levels considered acceptable. She sued the defendant for damages.

At the trial, the court learned that the defendant had been aware of the arsenic problem but hadn't told the plaintiff. To make things worse, the defendant was himself a doctor; and, as such, he would have been particularly aware of the health hazards posed by arsenic. The judge found that the defendant had had a duty to disclose the problem, so damages were awarded to the plaintiff. Damages of \$1000 were awarded to Mrs. MacDonald and each of her two children. As well, *punitive damages* of \$7000 were awarded to the plaintiff.

- a. From what you've learned of civil cases involving environmental concerns, what was the basis of the case brought against the defendant (trespass, nuisance, negligence, and so on)? Explain your answer.
 - b. Do you agree with the damages awarded the plaintiff? Give your reasons.
 - c. You haven't been taught about punitive damages; but judging from the situation and the word *punitive*, suggest what they might be.
- 15.** Read the following illustration and answer the questions based on it.

Several babies and young children suffer from skin rashes, breathing difficulties, and nausea due to a lawn spray applied by the owners of a property next to the schoolyard where the children play. The company argues that the chemical is safe because it's been passed by the Commercial Chemicals Evaluation Branch of Environment Canada.



- a. If the parents were to take the people responsible for spraying to court, what remedy would they likely be seeking? Give reasons for your answer.
- b. If the parents began an action on the grounds of nuisance, would this be a case of public or private nuisance? Give reasons.
- c. On what grounds other than nuisance might the parents base a case?
- d. What defences might the defendant use if this case ended up in civil court?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

This wraps up your overview of traditional common-law methods of dealing with situations where one or more parties are harmed by environmental pollution caused by another party. As you've seen, there are advantages to using these common-law methods in some cases; but with today's potential for extraordinary damage caused by such things as major oil spills, wholesale dumping of toxic waste, and meltdowns of nuclear reactors, the approaches and the remedies developed by the common law simply aren't adequate. What's needed are such things as strictly enforced government regulations, stiff penalties, and mandatory review processes. These are the things you'll be looking at shortly.

16. You've encountered a number of terms in Section 1 that may or may not be new to you. Some are related to environmental concerns while others are purely legal. To finish up this lesson—and Section 1—test your mastery of this terminology by identifying the term being described by each of the following statements. Try to do this without looking back for the answers; but when you're finished, be sure to go back and review any of the material that gave you problems.

- a.** the body of law that has gradually developed as judges have made decisions
- b.** money awarded to a plaintiff by a court to compensate for a wrong suffered
- c.** a dynamic system made up of living organisms and their non-living environment that interacts as a unit
- d.** a court order directing a person to do (or sometimes not to do) something
- e.** everything that surrounds something or someone
- f.** failure of a person to use reasonable care, resulting in injury or loss to another
- g.** a court decision that lower courts must follow
- h.** the use of natural resources that meets the needs of people today while conserving for the future
- i.** liability that results when a legal activity causes harm to another even if no negligence was involved
- j.** a civil wrong other than a breach of contract

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Assignment

Now open Assignment Booklet A and answer the questions asked in the Section 1 Assignment.

Suggested Answers

- | | | |
|--------------------------|-----------------------|-----------------------|
| 1. a. statute law | c. statute law | e. statute law |
| b. common law | d. common law | |
| 2. a. civil | c. criminal | e. criminal |
| b. civil | d. civil | f. civil |

3.
 - a. The plaintiff in a civil trial corresponds to the *Crown prosecutor* in a criminal trial, while the accused in a criminal trial corresponds to the *defendant* in a civil trial.
 - b. A defendant found liable in a civil case will usually (but not always) have to pay the plaintiff a stipulated amount of money by way of compensation.
 - c. A civil action is intended to compensate a victim—someone who has suffered a loss or injury.
 - d. The result of a criminal trial is that the accused is found either guilty or not guilty. If found guilty, the convicted criminal is sentenced.
 - e. Civil cases are tried to resolve a dispute between two or more parties.
 - f. In a criminal case, the onus of proof rests on the Crown prosecutor.
4. The cases in question 2 involving torts are b. (the tort of libel), d. (the tort of trespass), and f. (the tort of negligence). The other civil case presented in this question, a., involves a breach of contract, which isn't considered a tort.

5.

Tort Law and Environmental Disputes

Advantages

- Individuals can sue polluters without government intervention.
- Courts will order plaintiffs who win their cases to be reimbursed for the losses they've suffered.
- It's possible to win an injunction to stop a polluter permanently.

Disadvantages

- The legal costs can be prohibitive for private individuals.
- The costs for providing the expert witnesses (such as scientists and technical experts) is great.
- Civil cases can take much longer than criminal ones in coming to trial—perhaps three to five years.
- Only plaintiffs who have a property interest in any land being affected can commence a civil suit.
- It can be hard to prove that any harm done by a polluter was foreseeable and directly caused by the pollution.
- The most widespread problems (such as the greenhouse effect) can't be resolved by individuals taking other parties to court in tort cases.

6. Tort law is designed to give one party a means of getting compensation if harm has been suffered because of the action of another party. In days when environmental problems were small and localized, this system worked well to resolve them, and in some cases it still does. But in an era with global problems like the hole in the ozone layer, greenhouse gases, and the burning of the tropical rainforests, stronger, more sweeping legal means are needed to fight the environmental battles that are putting the whole planet at risk.

7. Vivian would have to establish that

- the increase in stillborn calves is, in fact, directly caused by the mill's pollution
- the pulp mill's owners had acted without reasonable care in building and operating the mill
- it was reasonably foreseeable that harm might be done to cattle in the area by pollution caused by the mill

8. Private nuisance occurs when one person or a small number of people are affected by the actions of the defendant. In these cases, the person or group of people affected are the ones who take the defendant to court for compensation or an injunction.

Public nuisance occurs when the rights of the general public are infringed upon by the actions of the defendant. In these cases, the legal action is usually (but not always) taken by a government official such as the attorney general of the province on behalf of the public.

It may surprise you to learn that, in fact, public-nuisance suits are harder to win than are private-nuisance ones. There are two reasons for this:

- If the pollution is widespread, it can be hard to show any one person has suffered special harm.
- Sometimes government officials hesitate to pursue public-nuisance cases because the economic benefits of the industry doing the polluting are felt to be greater than the harm done to the environment.

9. **a.** This would be a case of private nuisance since only one family is claiming to have been affected by the actions of the defendant.

b. Two possible remedies are

- an injunction to stop Mr. Hoffmann from spraying his crops where the Estradas might be affected
- damages to compensate the Estradas financially

In this case, financial compensation doesn't seem appropriate; it's most likely that the Estradas would go for the injunction.

c. Two defences open to Mr. Hoffmann are as follows:

- As a farmer, he's legally entitled to take normal precautions to ensure a healthy crop. This would include spraying pesticides in a careful and prudent manner.

- If the Estradas have by any chance put up with Mr. Hoffmann's spraying for 20 years without complaint, Mr. Hoffmann could claim to have acquired by prescription the right to spray where the Estradas' property is affected.

d. The Estradas wouldn't have much chance of winning their case. The courts have to balance the reasonable use of Mr. Hoffmann's farmland with the nuisance it creates for the Estradas. They also have to look at the benefit to the community of Mr. Hoffmann's activities. In our society, it's generally considered reasonable for farmers to spray crops (though this could change in the future), and Mr. Hoffmann does this in a careful manner. What's more, the economic benefits of farming to our society are extremely important. Add to this that the Estradas could not show that anyone had been harmed, along with the fact that spraying takes place only once a year, and it's highly unlikely that the court would take any action against Mr. Hoffmann.

- 10.** In *Kerr et al. v. Revelstoke Building Materials Ltd.*, pollutants from a timber mill forced the plaintiffs to close their motel. The plaintiffs sued in trespass and were awarded damages. The principle established here is that if airborne pollutants waft directly onto someone's land, this can be considered trespass.

In *Friesen et al. v. Forest Protection Limited*, the plaintiffs were covered by a cloud of pesticide spraying a neighbouring field. They sued in trespass and in nuisance and were awarded damages. The principle established here is that spraying chemicals directly onto a neighbour's land constitutes trespass as well as private nuisance.

- 11.** According to the principle of strict liability, in some situations a person can be held liable for accidental harm done to another even if there was no negligence involved. This can happen when the person is engaging in behaviour so inherently dangerous that there is a great risk of harm being done if anything should go wrong. Applied to environmental issues, the principle is usually used in a situation where someone stores toxic chemicals, explosives, or some other dangerous substances on his or her land and somehow they escape and damage neighbouring property.
- 12. a.** The expression *an Act of God* is a legal term meaning an unforeseeable natural event, such as a tornado, that's beyond the ability of anyone to predict and that causes harm.
- b.** There was no Act of God here, because there was no unpredictable natural calamity. Presumably, the defendant could have discovered the old shafts and taken steps to prevent the water from escaping.
- c.** In this case, it's likely that the defendant would not have been found liable. The defence of *due diligence* can be used as a defence in strict-liability cases. This means that if a defendant can prove that he or she took all the precautions a reasonable person would have taken but that something like an Act of God occurred to cause the accident, the defendant won't be held liable even in strict liability cases.
- 13.** Answers will vary. It can seem unfair to penalize someone when that person hasn't been negligent, but it's important to safeguard others as well. Most people feel that those engaging in dangerous behaviour that puts others at risk should be held liable if an accident occurs. You, of course, may see things differently. Whatever position you took, were you able to back it up with reasons?

- 14. a.** The case here was based on negligence; the defendant was negligent in failing to inform the plaintiff about the arsenic. In the judgement, however, the judge said that the defendant's conduct came close to battery. Battery, unlike negligence, is a tort that requires a deliberate intention; the judge seems to have been implying that the defendant deliberately made a point of not passing on this information knowing that the plaintiff would be physically harmed.
- b.** You probably felt the damages were low. The judge made the point that the illness suffered by the plaintiff and her family was brief, though intense, and all three people made full recoveries.
- c.** The term *punitive damages* refers to money awarded a plaintiff not to compensate him or her for a harm suffered but only to punish the defendant. In this case, little harm had been suffered, but the judge wanted to teach the defendant a lesson because of his reprehensible behaviour.
- 15. a.** The parents might seek damages to compensate them for any medical expenses they'd incurred as well as for the pain and suffering inflicted on their families (they might also be after punitive damages, which are intended to punish the offenders, but this goes beyond the material you've been given). It's more likely, however, that what they'd want most would be an injunction stopping the defendants from spraying again.
- b.** This would be a case of private nuisance. Only a few children were affected, and it's their families, not a public authority, who were taking legal action.
- c.** The parents might base their case on any of the following grounds:
- trespass
 - negligence
 - strict liability
- d.** The defences the defendant might use would vary depending on the grounds on which the case was based. What follows is a list of likely possibilities:
- If the case is based on nuisance, the defendants might use the defences of legal authority or prescription.
 - If the case is based on negligence, the defence would likely be that
 - there is no evidence that the spraying caused the children's health problems
 - the result wasn't foreseeable
 - the defendants took reasonable precautions
 - If the case is based on strict liability, the defence would likely be due diligence.
 - If the case is based on trespass, the defence would likely be that no deliberate trespass took place; rather, unpredictable air currents wafted the chemicals onto neighbouring properties.
- 16. a.** common law
- b.** damages
- c.** ecosystem
- d.** injunction
- e.** environment

- f. negligence
- g. precedent
- h. sustainable development
- i. strict liability
- j. tort

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Section 1 Conclusion



In Section 1 you've been introduced to the area of legal studies known as *environmental law*. Lesson 1 gave you an overview of environmental concerns facing Canada and the world as a whole. It's likely that little of this was new to you; but given the magnitude of the problems and the increasing importance they're likely to have for your generation and for those that follow you, it's important that you have a firm grasp of the basic issues.

In Lesson 2 you got into some actual legal issues and looked at how the common law has traditionally dealt with environmental concerns. Historically, the common-law approach has worked adequately—and still does the job in some situations; but the size of the problem and the global nature of environmental concerns today mean that stronger weapons are needed to do battle. It's measures of this sort that you'll be looking at in the next section.

SECTION 2

Legislation That Protects the Environment



Imagine driving along the Kananaskis Highway, hiking into Waterton Lakes National Park, walking through the rain forest on Vancouver Island, or fishing in Chain Lakes, Alberta. The sights you see on your journey are breathtaking: the landscapes are spectacular, and the forests are plentiful. Have you ever wondered who controls the water you drink, the air you breathe, and the panorama you see in the Canadian wilderness?

The federal, provincial, and municipal governments in Canada are very much aware of today's environmental problems and concerns. In this section you'll learn why these governments have enacted laws to preserve our environment, what factors they must take into account when creating laws, and how the laws work to preserve the natural world that supports all life. When you've finished the section, you should be able to identify major environmental legislation, describe the roles of public reviews and projects likely to affect the environment, and explain a number of international environmental concerns.

Lesson 1: Jurisdiction over the Environment



legislation: a law or laws that have been passed by a governing body

If you take an interest in issues related to the environment, you may have followed some of them in the news. If so, it's more than likely that you became a little confused. Both Canada's federal government and the various provincial governments have passed **legislation** related to the environment, and it's normal for many organizations and interest groups to get involved in the processes used to solve environmental disputes. As a result, it's very easy to feel a bit at sea about what exactly is going on.

bylaws: laws passed by municipal governments

The first thing to remember is that in Canada the power to pass laws related to the environment is divided between the federal and the provincial governments. To make matters slightly more muddled, municipal governments also have limited powers to make **bylaws** relating to local environmental matters. The result is a bit of overlap and some confusion as to what laws apply where.

jurisdiction: authority—such as the power to make laws

As you've no doubt learned in social studies courses, when Canada was created in 1867, the *British North America Act* (often called the *BNA Act*) divided power between the federal and the provincial governments. This act, a statute passed by the British Parliament, tried to strike a balance about which level of government controlled what. Of course in 1867 no one was very much concerned with environmental problems. Certainly there were localized problems—such as factories discharging waste into streams used by farmers—but no one yet envisioned anything like the *Exxon Valdez* or Chernobyl catastrophes, let alone global warming or the depletion of the ozone layer. The result is that nowhere in the *BNA Act* does it say which government has control over the environment, and today both levels of government have some claim to **jurisdiction** over environmental issues.



The Fathers of Confederation

1

constitution: a law establishing the fundamental principles on which a nation is based

patriate: return to one's country

Because the *BNA Act* created Canada, it was, in effect, Canada's **constitution**; but since it was passed by the British government, only that body could *amend*, or change, it. This odd state of affairs came to an end in 1982 when the constitution was **patriated**—in other words, transferred—to Canada. At this time, the act was renamed the *Constitution Act, 1867*. It became part of a larger Canadian statute known as the *Constitution Act, 1982*; today this is Canada's fundamental law—its constitution. Though important components were added to the original, the division of powers set out in 1867 remained essentially the same.

So just how does the *Constitution Act, 1867* divide up powers between the levels of government? Put simply, Section 91 of the *Act* gives the federal government 29 areas of jurisdiction. It also gives the federal government the power to make laws for the "Peace, Order, and good Government of Canada." Section 92, meanwhile, gives the provincial governments jurisdiction over 16 areas.



That "Peace, Order, and good Government" clause in the *Act* is often called the *residual-powers clause*.

It gives residual powers—powers not actually mentioned in the *Act*—to the federal government. As you can imagine, as new issues have arisen, this clause has frequently been used to allow the federal government to assume control over them.

The provinces, in turn, have delegated some of their areas of jurisdiction to municipal governments—such as cities, towns, and counties. For instance, municipal governments have control over areas like garbage quotas, lawn-watering restrictions, building regulations, the hours during which stores can remain open, and noise laws.

¹ George P. Roberts/Library and Archives Canada/C-000733

Unfortunately, while the people who drafted the *Constitution Act, 1867* worked hard to prevent any jurisdictional disagreements between the levels of government, they simply couldn't foresee the issues that would develop after their time. The inevitable result is that disputes have arisen between federal and provincial governments over who controls what. One example of this involves the control of offshore resources—like fish and petroleum products. Another example is communications, which was placed under federal control in 1867. Today, with the world dependent on instant communication and digital technology, the provinces generally feel they need more control of this vital part of our modern world.

But what happens when jurisdictional disputes arise? If discussion fails, they end up in the courts, and, as already mentioned, the courts have usually used the residual-powers clause to grant jurisdiction to the federal government. Understandably, perhaps, this hasn't always made the provinces happy.

Now test your understanding of the material you've just read by answering the following questions.

1.
 - a. Which section of the *Constitution Act, 1867* sets out the federal government's areas of jurisdiction?
 - b. Which section sets out the principal areas of provincial jurisdiction?
2. Provincial governments have delegated—or passed down—some of their power to municipal governments. Identify **two** or **three** environmentally related powers that have been given to this third level of government.
3. Point out at least **one** change related to environmental issues in our society that has caused jurisdictional disputes between the federal and the provincial governments.
4. When the provincial and federal governments have a dispute over jurisdiction, the courts must decide the matter.
 - a. Which of the two sides have the courts traditionally favoured?
 - b. Explain why this has been the case.

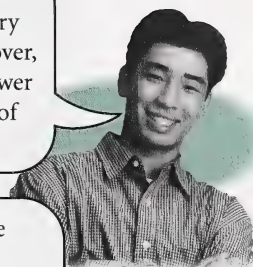
Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

As you've read, the *Constitution Act, 1867* gives the federal government what are often called *residual powers*. This is because the statute says that jurisdiction over areas not specifically laid down in the *Act* is to go to the Government of Canada, not the provincial governments. The so-called *residual-powers clause* is at the beginning of Section 91. It reads as follows:

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.



In other words, even though the guys who drew up the *Act* couldn't think of every area to give some level of jurisdiction over, they were smart enough to say that power over everything they hadn't thought of would go to the feds. Right?



That's right, but as you'll see next, the *Constitution Act, 1867* does give the provinces control over enough areas that both levels of government have a solid claim to jurisdiction over environmental matters.

Going Further

You can look at the entire *Constitution Act, 1867* on the Internet. Go to this address (in the site of the federal Department of Justice):

<http://laws.justice.gc.ca/en/index.html>

There, click on the Constitution link and you'll be able to access all the parts of the *Constitution Act*. To read Sections 91 and 92 in particular, thereby seeing the entire division of power between the federal and provincial governments, click on IV: Legislative Power and then scroll down to the sections you're looking for.

You now know the basis on which powers are divided in Canada between the federal and provincial governments. To get a better idea of how the *Constitution Act, 1867* divides up jurisdiction over environmental matters in particular, read the following selection. When you've finished the reading, answer the questions that come after it.

Under the *Constitution Act, 1967*, the power to pass laws relating to the environment is divided between the federal and provincial governments. The provincial governments have, in turn, delegated some of their law-making authority to municipal governments.

The federal government derives its jurisdiction over environmental matters through a number of exclusive powers. Navigation and shipping, seacoast and inland fisheries, canals, harbours, rivers, and lake improvement, federal works and undertakings, and trade and commerce are the

most notable powers. Another is the residual power available under the "peace, order, and good government" clause. These powers allow the federal government to pass environmental laws that have a national dimension and deal with a national concern. The regulation of atomic energy and the control of toxic pollution are two examples.

The provinces and territories have jurisdiction over property and civil rights, the management and sale of public lands, and local and private matters. This gives them considerable authority

over land use and development of natural resources and allows provincial governments to pass wide-ranging environmental laws.

Sometimes, divisions of responsibility between departments within the same governmental level, or among the different levels of government, overlap or are unclear. Confusion and complexity on environmental issues result. This has led to calls for constitutional reform, but observers believe that change will not

be achieved easily. They point out that two seemingly contradictory interests must be reconciled: The federal government must be given enough authority to represent Canada effectively at the international level and to set national environmental standards. At the same time, local and provincial and territorial interests must be recognized and protected, particularly those relating to employment and economic development, to preserve national unity.

5. Along with the residual powers given the Canadian government in its “Peace, Order, and good Government” clause, the constitution specifically gives the federal government control over a number of areas that relate directly to the environment. As well, the *Act* gives jurisdiction to the provinces over several areas that relate to the environment. Make a chart like the one that follows, and fill it in with relevant powers given to the two levels of government. The chart has been started for you.

Federal Powers	Provincial Powers
<i>peace, order, and good government</i>	

6. Today in Canada the provincial governments control most of the development of natural resources. How can this jurisdiction be justified with reference to the country’s constitution?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



As mentioned earlier, the provinces have delegated some powers to local, or municipal, governments. The fact is that municipal governments have been passing bylaws relating to the environment for a long time now. A regulation passed by the English town of Beverly in 1467 laid down that “no one henceforth here [is] to build any kiln for burning brick . . . under penalty of 100s” because of “the stink and badness of the air to the destruction of fruit trees.”

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7. From what you've read, try to determine which level of government—federal, provincial, or municipal—likely has jurisdiction over the following areas. Some cases should be obvious; in others, you may have to take educated guesses.

- a. commercial fishing
- b. the spraying of insecticide to eliminate mosquitoes from local parks
- c. the transportation of dangerous goods on the Trans-Canada Highway
- d. the transportation of dangerous goods on city streets
- e. the control of garbage at landfill sites
- f. the control of forest fires and the destruction of trees
- g. the emission of smoke from factories
- h. the development of natural resources
- i. the regulation of atomic energy



8. Read the case study *R. v. Fowler* that follows. Read it carefully; it may be difficult to understand at first. When you've finished, answer the questions that come after it. Note the margin definition of the expression *ultra vires*, which occurs in the reading.

ultra vires: a Latin expression meaning beyond the power—that is, beyond the authority of a government to make laws about

R. v. Fowler (1980) Supreme Court of Canada 2 S.C.R. 213

Fowler was originally charged under section 33(3) of the *Fisheries Act*, which states "No person engaging in logging, lumbering, land clearing, or other operations, shall put knowingly, or permit to be put, any slash, stumps, or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into such water."

Fowler operated a logging business on the coast of British Columbia. Logs being removed from the forest had been dragged across a small stream, leaving debris in the water. This stream, which flowed into the ocean, was used for the spawning and rearing of salmon. At trial in provincial court, no evidence was presented showing that the debris had harmed the salmon in any way.

Fowler was acquitted at trial. The decision was reversed at the County Court, and a further appeal at the Court of Appeal was dismissed. Fowler then appealed to the Supreme Court of Canada.

The Court restored the trial judgment and indicated that "subsection 33(3) makes no attempt to link the proscribed conduct to actual or potential harm to fisheries. It is a blanket prohibition of certain types of activity, subject to provincial jurisdiction, which does not delimit the elements of the offence so as to link the prohibition to any likely harm to fisheries. Furthermore, there was no evidence before the Court to indicate that the full range of activities caught by the subsection do, in fact, cause harm to fisheries." The prohibition in its broad terms is not necessarily incidental

to the federal power to legislate in respect of seacoast and inland fisheries and is *ultra vires* of the federal Parliament.”

1. With what offence was Fowler charged?

2. What dangers are posed to fish when logging debris is deposited in streams?

3. What does the term *ultra vires* mean? On what basis did the Court declare subsection 33(3) to be *ultra vires*?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Before going on to the next lesson, you should be aware of one more aspect of environmental law that adds yet another level of complexity. You’ve now thought about the powers of the three levels of government when it comes to looking after environmental issues, and you’ve seen how this has created certain tensions between the different levels. But remember that in many respects the environment is something shared not only by municipalities, provinces, and Canada as a whole; it’s also shared by other countries—and, indeed, the entire planet.

Environmental issues don’t respect international borders; and if advances are to be made, often countries have to work together and sign treaties and protocols. This can be very difficult at times, especially when the countries have very different interests. Developed countries, for instance, like Canada, may be willing to curb pollution emissions, while developing countries, like India, object that for them to do so would cost so much it would crush their chance of ever giving their citizens an improved standard of living.

Confused? At this stage you may be, but things should get clearer as you go along. The important point to remember now is simply that when it comes to legislation designed to protect Canada’s natural resources and the environment, all three levels of government are at work and sometimes there’s a good deal of overlap. This is because the *Constitution Act, 1867* gives both the provinces and the federal government grounds for claiming jurisdiction. What’s more, because environmental concerns don’t respect national borders, often the governments of countries have to collaborate and sign treaties with the governments of other countries whereby both (or all) of them agree to certain regulations.

What you need to do now is look at a few pieces of actual legislation to get a better understanding of how things really work. You’ll begin to do this in the next lesson.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 1.

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Suggested Answers

1. **a.** The federal government's areas of jurisdiction are set out in Section 91.
b. The principal areas of provincial jurisdiction are set out in Section 92.
2. Powers mentioned in the material you read include the authority to regulate such things as household garbage quotas, noise pollution, and lawn watering. It could also be argued that the power to establish building regulations is environmentally related, at least in part.
3. One area of change mentioned in the material you were given that has caused environmentally related jurisdictional disputes is the development of offshore resources (such as offshore oil reserves). The other area mentioned—modern communications systems—also has environmental implications. You may possibly have thought of other changes; a few examples might be our vastly increased use of petroleum products, the development of atomic energy, our increasing reliance on potentially harmful chemicals, or the sheer scale of our production of waste.
4. **a.** For the most part, the courts have favoured the federal government.
b. Section 91 of the *Constitution Act, 1867* gives the federal government *residual powers*—that is, authority over any area not specifically given to the provinces in the *Act*. You'll be looking at the *residual-powers clause* in the *Act* more closely in the material that follows in the lesson.
5. Charts may vary a bit, but they should look substantially like the one that follows.

Federal Powers	Provincial Powers
<ul style="list-style-type: none"> • <i>peace, order, and good government</i> • navigation and shipping • seacoast and inland fisheries • canals, harbours, rivers, and lake improvement • federal works and undertakings • trade and commerce 	<ul style="list-style-type: none"> • property and civil rights • the management and sale of public lands • local and private matters

6. Section 92 (Clause 13) of the *Constitution Act, 1867* gives the provinces control over property and civil rights. Property, of course, includes land, so the provinces can claim control over the extraction of resources from land within their boundaries.
7. **a.** federal **f.** provincial
b. municipal **g.** provincial
c. federal **h.** provincial
d. municipal **i.** federal
e. municipal, provincial

Note that in environmental law things are rarely quite this clear-cut. In actual fact, there's significant overlap in some of these areas.

8. **Question 1:** Fowler was charged with the offence of allowing contaminants from his logging business to pollute a stream in which salmon spawned and were reared. He was charged under subsection 33(3) of the *Fisheries Act*.

Question 2: Answers will vary. One problem is the depletion of oxygen in the water; another is adding toxins that the fish ingest.

Question 3: The Latin expression *ultra vires* means *beyond the authority*—in this case, beyond the authority of a government to regulate with laws. The Court declared subsection 33(3) to be beyond the authority of the federal government on the grounds that the clause was too general in its scope and would harm activities that would not be damaging to the fisheries industry. The Supreme Court felt that while the federal government has the power to make laws regulating the fisheries industry, the broad terms of this subsection went beyond that authority. What this means in actual fact is that after this Supreme Court decision, this subsection of the *Fisheries Act* would no longer be the law.

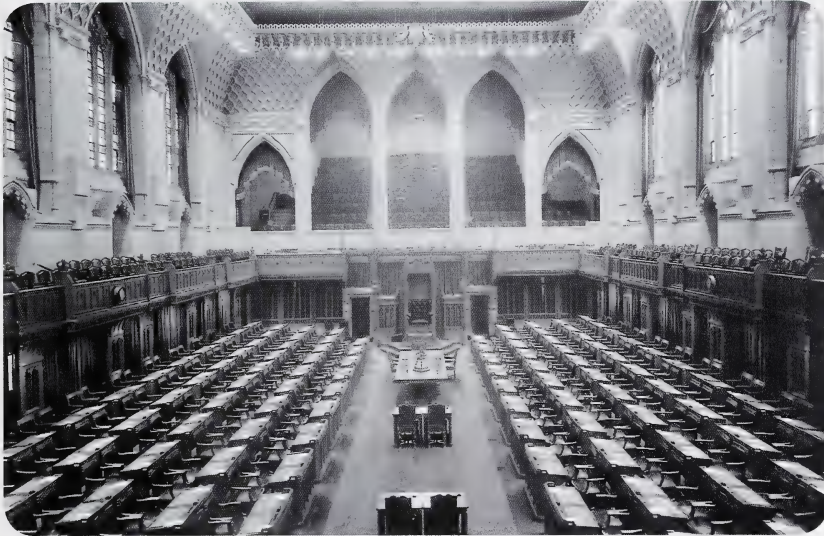
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Lesson 2: A Look at Federal Legislation



The Earlier Legislation

Imagine the following scenarios:

- The people in charge of a chemical company knowingly dump hazardous waste products into a nearby river and don't tell anyone.
- The people in charge of a waste-disposal plant discover that there has been an accidental leak of toxic fumes. Knowing that it's too late to warn local residents, they decide not to say a word, though they take steps to see that such a situation won't recur.
- A provincial government allows a company to mine minerals in an area where such activity is likely to be destructive to a unique and delicate ecosystem. The government's decision is based in part on the fact that many people in the area need jobs desperately, and the mine would raise the people's living standards and help ensure that fewer children went hungry.

What's your reaction to these three situations? Most people would condemn the behaviour in the first situation with no reservations. The second is less clear-cut—after all, it was an accident; and why alarm people when it's too late to do any good? Still, it's probable that most people would feel that the company's decision was self-serving and that the public has a right to know that accidents like this are taking place. The last situation tends to divide people more evenly: some favour preserving natural habitat, while for others jobs and a decent standard of living for human beings are more important. This third scenario illustrates the fine line that governments have to walk in making decisions that affect the environment.

¹ Library of Parliament/Bibliothèque du Parlement



Going Further

The third of the preceding scenarios involves a government decision, and governments can't really be punished for their actions except at election time, when voters can choose not to send them back to office. But what about the first two scenarios you've been asked to think about? Do you think the people who made those decisions should be regarded as criminals? What should their punishments (if any) be? Just how serious are their offences as compared, for instance, with things like murder, theft, or assault?

Pick **one or both** of the scenarios, and present your answer in a short position paper of about a page. Be sure to explain your reasons clearly.

regulatory offence: an offence created by a regulation based on a statute rather than by the statute itself

In Canada, most offences against the environment haven't traditionally been regarded as criminal offences, though these days that situation seems to be changing. Most of the statutes passed by the federal government aimed at protecting the environment have created what are called **regulatory offences**. Regulatory offences can be changed more easily and frequently than statutory offences because they don't have to go before Parliament or a provincial legislature. People found guilty in court of regulatory offences aren't criminals, but they may have to pay large fines.

I don't like that approach. Personally, I think someone who poisons the air I breathe or the water I drink is far worse than a guy who steals my money. If a thief is a criminal, a polluter certainly should be too.



And today most people would probably agree with you—at least in severe cases of environmental damage. That's why recent legislation is much tougher than older statutes. Remember, our awareness of the seriousness of environmental dangers is a pretty recent thing. You'll be looking at a few typical statutes creating regulatory offences before moving on to some of the stiffer laws in place today.

To learn a bit more about the approach taken by statutes creating regulatory offences, read the passage that follows. As you read, pay attention to the difference between strict liability offences and absolute liability offences. If you've never taken a course in criminal law, note that the Latin expression *actus reus* refers to the act itself of committing an offence. For most crimes, it's necessary to prove both the act—*actus reus*—and the intention to commit it—*mens rea*.

When you've finished the reading, answer the questions that follow it.

The various environmental statutes that have been introduced in Canada impose a vast network of regulations designed to protect the environment. At the same time, these laws recognize that a degree of environmental pollution is necessary for the economy to function to meet the material needs of Canadians. The task has been to find an acceptable balance.

With some important exceptions, the **regulatory offences** that are defined in Canada's environmental laws bring relatively minor penalties that do not carry the stigma associated with a criminal conviction. They are either **strict liability offences** or **absolute liability offences** . . . , requiring only proof of *actus reus*. In the case of strict liability offences, due diligence can be offered as a defence. However, such a defence is not available to someone charged with an absolute liability offence.

Recently, there has been a trend at both the federal and provincial levels of government toward creating tougher penalties for those who violate environmental laws. This has given

these penalties, which include huge fines, a kind of "quasi-criminal" quality. The *Canadian Environmental Protection Act* goes so far as to define certain acts as indictable offences.

The basic premise behind the environmental statutes that appeared in the 1970s and 1980s was that we should stop believing that our natural environment has an unlimited capacity to absorb our wastes. These "clean-up" laws were designed to prohibit or minimize discharge of wastes. At the same time, through careful management, we can rely upon the *absorptive capacity* of the environment to dilute and cleanse limited amounts of pollutants with minimal risk of lasting harm.

A common feature of these laws is the use of permits. Industries wishing to discharge wastes must first obtain a permit from the appropriate government agency. Applicants must outline the system of pollution control they intend to use. Permits are then issued. The permits set limits based on the amounts of pollutants government officials have determined are safe to discharge.

1. You should be familiar with the concepts of *strict liability* and *due diligence* from the discussion of tort law in Section 1.

The same concepts apply to regulatory offences established under Canada's environmental statutes, but now you've encountered something new—*absolute liability*.

In your own words, explain the difference between strict-liability offences and absolute-liability offences.

2. Explain how Canada's regulatory laws often use a system of permits to limit harm to the environment.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

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Two typical examples of earlier statutes with a strong impact on environmental law—both passed by the Government of Canada—are the *Canada Shipping Act* and the *Fisheries Act*. Though these are examples of earlier statutes, they're still very much in force today—and some of the penalties they establish are severe. Read the discussions of these two statutes that follow; then answer the questions that come after them.

The Canada Shipping Act

The *Canada Shipping Act* regulates activities that could result in pollution. Specifically, the Act prohibits commercial ships and pleasure craft that operate in Canadian waters from discharging certain pollutants. Regulations cover the discharge of wastes and substances such as oil, arsenic, lead, and mercury. Severe penalties are imposed on those who violate regulations, including fines up to \$1 million and/or terms of imprisonment not exceeding three years.

The Act sets out the factors to be considered by the courts when determining the punishment for violators: the actual harm caused, the cost of clean-up, any remedial action taken by the offender after the violation to reduce harm, whether the offence was deliberate or accidental, evidence of negligence or lack of concern, and finally, precautions taken by the offender to avoid the offence in the first place.

The Fisheries Act

The *Fisheries Act* applies to both inland and coastal waters. It forbids the depositing or discharge of **deleterious substances** in waters where fish might be found, or into places where the substance could eventually enter the water. "Fish" includes all aquatic animals. The Act defines a deleterious substance as "(a) any substance that, if added to water, would degrade or alter the quality of that water so that

it is rendered harmful to fish, and (b) any water that contains a substance in such quantity or concentration that it would, if added to water, degrade the quality of the water and, therefore, cause harm to fish."

Examples of such substances are Bunker "c" oil, diesel fuel, wood preservatives, sewage, and sediments. Enforcement measures include fines and court orders prohibiting activities likely to result in further offences. A spill that continues for several days can lead to the imposition of multiple charges under the Act.

Section 41(3) of the *Fisheries Act* provides expressly for a defence of due diligence. "It is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

If a construction proposal or project seems likely to lead to a deposit or discharge of deleterious substances, the Minister may demand to see the plans. The Minister may then order that the project be modified or abandoned. Where officials suspect that an existing operation is in violation of regulations, the Minister may demand that company representatives produce the information necessary to assess the situation.

3. Make a chart like the one that follows and, in point form, fill it in with features of the two acts being discussed.

Canada Shipping Act	Fisheries Act

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4. The *Canada Shipping Act* goes far beyond the token-punishment approach for serious offences. Do you agree or disagree with penalties that include million-dollar fines and three years in prison? Why or why not?
5. The reading tells you that the *Fisheries Act* allows the defence of due diligence. Do you agree that this defence should be allowed even where serious harm has been done to the environment, or should offences under this act be of the absolute-liability variety? Explain your reasons.
6. If the *Exxon Valdez* incident had been in Canadian waters, which statute could have been used to prosecute the perpetrators of the offence? Give reasons for your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Now read the short case study *R. v. Catlender* that follows. Then answer the questions that come after it.

***R. v. Catlender* (1959) British Columbia Magistrate's Court 29 W.W.R. 401**

The chief mate of the *Kiaora* was charged under the Oil Pollution Prevention Regulations of the *Canada Shipping Act* which states, "No person shall discharge or allow to escape from a ship into the inland, minor or other waters of Canada any oil or oily mixture that fouls the surface of the water."

Under the chief mate's direction, the *Kiaora* had been discharging bunker fuel into storage tanks on shore by means of hoses attached to the ship. At the end of this operation, the chief mate had ordered that the hoses be winched

back aboard ship, knowing that the hoses contained residual amounts of oil. This oil had spilled out onto the water as the hoses were being drawn in.

The chief mate was convicted of the charge and fined \$250. The judge in the case noted that the chief mate was the only person in charge of the unloading operation, and that the shore party did not fall within the scope of the Act's regulations. The chief mate had also failed to take precautions to prevent or minimize the escape of oil.

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7. a. Do you agree that the chief mate should have been singled out for prosecution in this case? Explain why or why not.
- b. Bearing in mind that this offence took place in the 1950s, do you think the penalty was appropriate? Give your reasons.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

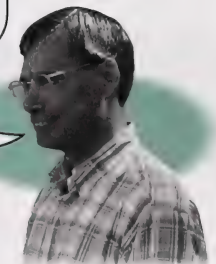
There are, of course, other federal statutes controlling specific areas of environmental concern. Here are a few examples, just to give you an idea of what's out there:

- The *Nuclear Liability Act* establishes rules for liability in the case of an accident at a Canadian nuclear reactor.
- The *Pest Control Products Act* regulates pesticides and herbicides. The *Act* imposes control over manufacturing, importing, labelling, distributing, and exporting these products.
- The *Transportation of Dangerous Goods Act, 1992* applies to all stages of handling and transporting dangerous goods from original point of loading to destination. The purpose of the *Act* is to promote public safety in transporting hazardous goods by requiring proper registering, classifying, labelling, packaging, documenting, and inspecting of all such goods. The Ministry of Transport is responsible for administering the *Act*, and it specifies what goods are "dangerous."
- The *Canada National Parks Act*, which came into law in the year 2000, significantly strengthened the protection that its predecessor, the *National Parks Act*, provided for Canada's park system. While the older statute tried to balance the role of the parks as tourist playgrounds offering recreational and commercial opportunities with their role as a habitat preserved for wildlife, the new one came down strongly in favour of the latter role. This statute makes the preservation—and restoration—of ecological integrity a top priority and provides strict protection for both natural resources and natural processes. For example, under this legislation, commercial development in park communities like Banff is capped, and about 90 percent of mountains are legally designated as Wilderness Areas.



I can see the problem in the original legislation. There was a real contradiction in it, wasn't there? I mean the more tourists and businesses there are, the less pristine habitat there'll be for wildlife. And if wildlife habitat comes first, tourists and development have to be minimized.

And that's exactly why the new law was passed—a law that sees the principal role of the parks as the preservation of wilderness and wildlife. With this new legislation, there's a great deal more habitat protection and much stricter control on development and other human activity in the parks.



The following reading will make this contradiction clear. Bear in mind that it was written before the *Canada National Parks Act* replaced the older *National Parks Act*, but it offers a good discussion of the reasons the new Act was created.

Canada's parks attract visitors from around the world. This creates a dilemma. As the number of visitors to parks increases, more roads, trails, townsite development, campgrounds, and recreation facilities are required. This means more sewage and garbage. The presence of more and more people and the development required to accommodate them directly threatens the fragile ecosystems that the parks are supposed to preserve. Banff National Park is a good example. The city of Banff and surrounding areas have been transformed by an economic boom that has lasted for several years. Banff's rapid growth has put considerable pressure on the natural environment and raised concern for the preservation of the wildlife.

Resource extraction, mainly mining and logging, is another concern. It has been estimated that less than 50 percent of provincial parkland in Canada is protected in law from resource extraction.

Canada's parks face external threats as well. Air and water pollution originating from outside park boundaries often enters parks. Particularly damaging are acid rain and water-borne pollution from local communities and nearby industries. Logging activities in areas bordering parks can affect water quality through soil erosion. Hunters sometimes use logging roads to gain illegal access to parks. Perhaps the most serious problem posed to parks by these external threats is that they may imperil intact but vulnerable ecosystems existing within the parks, thereby endangering the very survival of certain wildlife species.

The extinction of species is not new to this planet. Scientists estimate that over 90 percent of the species that have inhabited Earth since life first appeared no longer exist. During the last few decades the accelerated rate of extinction, which some scientists estimate to be between 100 and 1000 times the natural rate, can be attributed almost entirely to human activity. The

main causes are the fragmentation and loss of natural habitat due to economic activities, overhunting and harvesting of species, and pollution of the air, rivers, lakes, and coastal waters. Although Canada, because of its northern location, is home to fewer species than countries in the tropics, the World Wildlife Fund has designated 255 species here as either threatened or **endangered species**.

Environmentalists have called on the federal and provincial governments to expand considerably the amount of land allocated specifically to habitat and wildlife protection. Both levels of government have made some progress in this direction.

One obstacle has been the high cost of acquiring new parkland. For example, South Moresby National Park cost the federal government \$106 million when it was created in 1988: \$50 million went to the British Columbia Government, which owned the land; \$26 million went to the compensating forest companies that held logging rights to the land; and the remainder went to park costs.

Another obstacle has been public opposition—often from residents of communities dependent upon resource-based industries, but also from large business interests. Parks “lockup” valuable natural resources. Creating new parks can eliminate potential job opportunities and cause loss of jobs for some types of occupations. Some of the bitterest and most emotionally charged confrontations in Canada in recent years have been between environmentalists campaigning to have a particular area declared a wilderness sanctuary, and forestry workers fearing for their jobs.

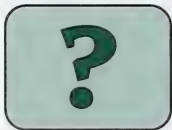
The 1993 protests in British Columbia, over the provincial government's decision to allow mixed use of land in Clayoquot Sound, offer a dramatic example and raise a number of legal and moral questions.

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8. The reading tells you that Canada's parks face external threats as well as internal ones. Give examples to show what this means.

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

Alberta is the home of Canada's original national park—Banff National Park. It can easily be argued that Alberta has the most spectacular and popular system of national parks in Canada. Chances are very good that you've visited the province's mountain parks; perhaps you've spent a good deal of time in them.



Have you visited the town of Banff? If you have, especially during the height of the season, you should be well aware of the enormous popularity of this beautiful tourist destination. But you may also have been put off by the crowds and the resulting threat to wildlife in the surrounding park. Your experience of the press of people and businesses in the town of Banff may help you understand in part why the Government of Canada saw fit to create stiffer laws to protect our parks from overdevelopment. The government decided to try to preserve the park's natural features at the expense of economic expansion.

9. Not everyone agrees with the thrust of the *Canada National Parks Act*. Some people believe that the chief role of the parks ought to be tourism; they resent the fact that now about 90 percent of the mountain parks is legally designated wilderness area. Some park residents and business people feel that it's unfair for the government to penalize them by limiting commercial development and the economic benefits that accompany it.

What are your views? If you had the power to make laws regulating our national parks, what would you put first—tourists and commercial development or preservation of wildlife and wildlife habitat? In two or three paragraphs, explain what steps you might consider taking to resolve the problem in Banff. Give your reasons, but try not to dismiss the position opposite to your own out of hand. If you're studying with a friend, take sides and debate this issue.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

Going Further

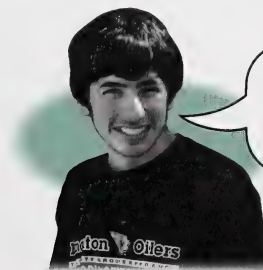
To see the complete *Canada National Parks Act*, access the website of the federal Department of Justice at this address:

<http://laws.justice.gc.ca/en/title/A.html>

There, click on the Laws box in the upper right-hand corner. On the next panel, go to the In Title field, enter Canada National Parks, and click OK. It will take you to the Act.

The Canadian Environmental Protection Act, 1999

The major piece of federal environmental legislation to be passed in Canada is the *Canadian Environmental Protection Act, 1999*—or, as it's usually called, *CEPA 1999*. The designation 1999 distinguishes this statute from the original *CEPA*, passed in 1988. The 1988 statute recognized the huge importance of environmental issues in the late twentieth century, and it provided for the stiffest penalties of any environmental statute in the country. People convicted of the worst offences under *CEPA* were made criminals and were to be punished as such. Unlike earlier federal environmental laws, *CEPA* addressed the problem of toxic pollution in all its forms; it wasn't limited, for instance, to pollution affecting the fisheries or the air we breathe. This statute set up a process to identify toxic substances, to regulate their production, their use, and their disposal, and to detect and punish violators. It gave the federal government the power to control all stages of the "life cycle" of toxic substances. It established a Priority Substances List that identifies substances that should be assessed right away for their toxic effects on people and the environment. It also forbade any new substance from being used before a proper assessment was carried out.



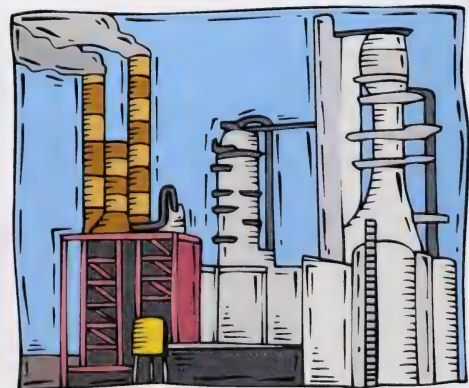
So just how does *CEPA* make sure that companies are doing what they're supposed to do?

CEPA uses two approaches: education, encouragement, and the provision of information on the one hand and enforcement by way of monitoring, inspecting, warning, and, finally, prosecution in the courts on the other. Anyone convicted of very serious offences under *CEPA* can face years of imprisonment and fines of up to \$1 million a day. Companies may also be forced to pay for cleaning up any pollution they've caused.



CEPA 1999 goes even farther than its predecessor in protecting the environment. The goal of both statutes is to protect the environment and people's health by regulating toxic substances; however, while the 1988 legislation focused on dealing with pollution that already exists, the 1999 statute is designed to prevent pollution from ever happening in the first place. Here are some of the highlights of the new law:

- It gives the government the power to require companies to create and to put into effect plans designed to prevent or minimize pollution.
- It stipulates the time frame in which companies must act to prevent pollution. They have two years to come up with a plan and 18 months to finalize action.
- It stipulates that all 23 000 substances known to exist in Canada will be assessed to see how toxic they are.
- It mandates (insists on) the virtual elimination of the most toxic substances.
- It increases the opportunity for public involvement by setting up a new *CEPA* Environmental Registry that provides easy access to information. This registry is to be accessible through the Internet. The *Act* also permits individuals to sue polluters if the government fails to enforce the law.
- It gives authority to require pollution-prevention plans for Canadian sources for international air and water pollution where no other Canadian government has taken action.
- It transfers authority to set standards for engine emissions for new motor vehicles from the *Motor Vehicle Safety Act* to *CEPA*.
- It sets up a new category of officer known as *CEPA* investigators. These officers can investigate suspected pollution offences and issue orders to stop illegal activity or to take action to protect public safety.
- It empowers enforcement officers to issue on-the-spot orders to stop violations and prevent pollution.



Going Further

If you're interested, why not visit the *CEPA* Environmental Registry at the following web address?

<http://www.ec.gc.ca/CEPARRegistry/default.cfm>

Once there, browse through the various features of the site. Do you think it would provide useful information to Canadians while encouraging public involvement in environmental issues?

10. *CEPA* sets up a process for

- identifying toxic substances
- regulating these substances
- detecting and punishing violations of the *Act*

- a. If you were in charge of identifying toxic substances, what standards would you set up to decide whether or not a substance should be classified as “toxic”?
 - b. What does the text mean when it says that the federal government has the power to control all the stages of the “life cycle” of a toxic substance?
11. The Chemicals-R-Us Company develops a new solvent and wants to sell it commercially in Canada. The directors of the company believe that they’ll be able to do this until the chemical is proven to be unsafe, which they think is unlikely to happen.

Are the directors right? Explain your answer.

12. Now read the case study *R. v. Aqua Clean Ships Ltd.* that follows. When you’ve finished, answer the questions that come after it.

R. v. Aqua Clean Ships Ltd. (1994) *British Columbia Provincial Court 12 C.E.L.R. 241*

The defendants operated an incinerator in Vancouver harbour for disposing of wastes from ships. The incinerator was located on a floating barge. The defendants were charged under the *Canadian Environmental Protection Act* with (1) loading a substance onto a barge for the purpose of dumping, and (2) with dumping refuse into the sea, in contravention of the *Act*.

Section 66(1) (a) of the *Act* defines dumping as “the deliberate disposal at sea from ships, aircraft, platforms, or other anthropogenic structures, including disposal by incineration or

other thermal degradation, any substance . . .” Section 67(2) of the *Act* states that dumping may be done in accordance with a permit granted under the *Act*.

The defendants had held a permit that expired on June 17. Environment Canada officials had advised them that the permit would not be renewed until they had demonstrated they could meet new guidelines respecting air emissions from incinerators. Shortly after, the defendants applied for a permit for conducting a test burn to find out whether their equipment

could meet the guidelines. The permit was received in August.

An inspection on July 7 revealed that incineration had taken place aboard the barge from July 5 to July 7. The two charges were then laid.

The trial judge convicted the defendants on the “dumping” charge, rejecting the defendants’ claim that they had merely been “curing” their equipment using natural gas. He accepted the evidence showing that the defendants had been incinerating small amounts of waste paper and shipboard wastes, and since they did not have a permit to do so, they were in violation of the Act.

However, the judge dismissed the charge of loading a substance onto a barge for the purpose of dumping, declaring that there was insufficient evidence that the waste loaded onto the barge on July 5 was intended for incineration during July 5 to July 7.

1. What events led to the laying of charges against Aqua Clean Ships Ltd.?
2. a. On what charge was Aqua Clean Ships Ltd. convicted? Explain.
b. Why did the judge dismiss the second charge?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Other Federal Initiatives



The various threats to our environment are today one of the chief concerns of scientists and policy makers alike, and the Government of Canada is very much aware of the importance of the problem. As a result, the government has done a good deal more than pass legislation such as the statutes discussed in this lesson. One important statute, which you’ll be looking at in the next lesson, is the *Canadian Environmental Assessment Act*; but over and above legislation like this, the government has begun initiatives designed to improve the physical world we live in.

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One such initiative is the Federal Green Plan, established in 1990. This plan committed the federal government to spend \$10 billion over the next few years to combat environmental problems. The plans of action included the following:

- the virtual elimination of persistent toxic substances within five years
- a 50-percent reduction in Canada's production of waste by the year 2000
- the setting aside of 12 percent of the country as protected space
- the completion of the national parks system by the year 2000

These were ambitious goals, and they weren't attained. Still, the plan's very existence underscores the realization on the part of Canadians that it's crucial to work at protecting our world while we still have the opportunity to do so.

Another Canada-wide initiative was the establishment in the 1980s of the Canadian Environmental Network to provide communication and co-operation between the federal government and non-government environmental organizations. The Canadian Environmental Network exists to

- raise public awareness of environmental concerns
- improve co-operation between non-governmental environment groups across Canada
- promote consultation with the public on environmental matters and improve co-operation between non-government environmental groups and government agencies

The Canadian Environmental Network gets much of its funding from the federal government, but it works at arm's length to ensure an unbiased point of view. Its work has been valuable in ensuring that the public has more input into Canada's environmental laws.

Going Further

To learn more about the Canadian Environmental Network, go to this web address:

<http://www.cen-rce.org/eng/index.html>

Once there, take some time to browse; you should find it an interesting website.



Because environmental issues are so complex, the federal government can't work in a vacuum; it must also rely on the various provincial governments to do what they can to promote environmental responsibility. Provinces do, of course, pass their own environmental laws (you'll be looking at some Alberta initiatives in the next lesson), but sometimes the federal government will work with one or more provinces to tackle environmental challenges with a more united front.



An example of this is the *Canada-Wide Accord on Environmental Harmonization*, which was signed in January 1998 by the federal government and all the provincial and territorial governments except Quebec. This accord is intended to improve co-operation and co-ordination between the different governments in attacking environmental problems; it provides a new framework for managing shared jurisdiction over the environment and establishes agreements on things like standards and inspections.

Sometimes the federal government will sign a *memorandum of understanding* with one province—or several provinces—to tackle a specific environmental issue. For example, in March 2004, it signed a *Memorandum of Understanding for Co-operation on Addressing Climate Change* with the Government of Manitoba—an agreement that the two levels of government would work together to address the challenges of climate change. Memoranda like this one lack the force of law, but they allow the different governments in Canada to share their resources in their mutual war on environmental degradation. Essentially, they are agreements to work together for a common end.

And that pretty well sums up this overview of some of the federal government's environmental laws. One important development in recent years that you haven't yet looked at is the increased emphasis now put on attempts to assess the potential impact on the environment of proposed developments—such as mines, pipelines, and logging. You'll be looking at environmental impact assessments in the next lesson, with an emphasis this time on Alberta law.

Going Further

Now that you've had a brief overview of the sorts of laws and agreements the Government of Canada uses to maintain a healthy natural environment, you might want to visit the Green Lane—the website of Environment Canada—the ministry responsible for environmental issues. Here's the address:

<http://www.ec.gc.ca/envhome.html>

The Green Lane, as you'll be able to see, “helps connect Canadians, exchange information, and share knowledge for environmental decision-making.” Take some time to explore this website; it's full of interesting information



Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer questions 2 and 3.

Suggested Answers

1. A person accused of either a strict liability offence or an absolute liability offence will be convicted as long as it can be demonstrated that the accused actually did the deed; it needn't be proven that it was done intentionally or even that the accused knew he or she was doing it. This is unusual in the area of public law, where it's generally necessary to prove that the accused both committed the act and either intended to do so or at least knew what he or she was doing. The difference between these two sorts of offences is that in the case of strict liability offences, the defence of due diligence can be used. This isn't the case with absolute liability offences.
2. The permit system works as follows. Companies wishing to discharge wastes, for instance, must apply for a government permit. In order for the permit to be granted, the company must explain precisely what they'll be doing and how they'll be controlling the spread of pollution. When granted, the permit sets limits on what the company can do. Failure to obtain a permit, or failure to abide by its terms, results in punishment.
3. Charts will vary somewhat. Compare yours with the one that follows.

Canada Shipping Act	Fisheries Act
<ul style="list-style-type: none">• controls activities that can cause pollution—especially discharges from ships• imposes severe penalties—for example, fines of up to \$1 million and jail sentences	<ul style="list-style-type: none">• applies to inland and coastal waters• forbids putting “deleterious substances” where aquatic animals may be harmed

- sets out how punishment is to be determined; for example, clean-up costs, harm caused, and whether the pollution was deliberate

- outlines examples of substances: Bunker “c” oil, diesel fuel, wood preservatives, sewage
- imposes penalties that include fines and court orders forbidding further offences
- can use defence of due diligence
- government can insist on seeing project plans that might result in harm and can order changes or modification

- Answers will be personal. Were you able to defend your answer? Did you base your defence on reason and not simply on an emotional reaction?
- Answers will be personal. Were you able to explain your ideas and present well-thought-out reasons?
- Probably either or both of the statutes could have been used. The *Canada Shipping Act* would apply because it forbids the discharge of pollutants from ships, and the *Fisheries Act* would apply because it forbids the discharge of substances anywhere that could harm aquatic animals.
- Answers will vary. On the one hand, the chief mate was responsible for the operation, and he alone made the decision to winch the hoses back aboard, knowing there was oil in them. On the other hand, the chief mate was an employee of a larger company, and it could be argued that to prosecute an individual in this sort of situation is to use a scapegoat and that the company that employs him should ultimately be held responsible. Whatever position you took, were you able to defend it with arguments?
 - Answers will vary. The spill was small; and in 1959, a fine of \$250 would have been more significant than it would be today. On the other hand, the question must be asked as to the deterrent value of small fines. Of course, in the 1950s people hadn’t yet begun to realize the severity of the pollution threat to the environment.
- Though laws can be passed to control what goes on within a park, outside factors can severely affect the ecology of any protected areas. Airborne pollution, for instance, such as acid rain, can drift over a park as well as anywhere else, damaging trees and other forms of life. Logging near a park can pollute waters entering the park and can cause soil erosion. External threats like these can take a heavy toll on protected areas even though activity within the area is closely regulated.
- Answers will vary. Most people find themselves on one side or the other of issues of this sort and have trouble understanding the opposite viewpoint. If you’re a real legislator—a person involved in the process of actually creating laws—however, you must try to appreciate both points of view.

Often, people who don’t live in a town such as Banff take the viewpoint that preserving the natural environment must come before commercial development. This is understandable, but sometimes people who take this position are being unintentionally hypocritical. They themselves may like to visit places like Banff, where they tend to expect good shopping, nice places to stay, and fine dining—in other words, commercial development. Often, too, these same people take for granted the right of their own communities to develop any commercial enterprises the market will allow.

This isn't to say that you shouldn't take the viewpoint that preserving the environment must come first; it's just that you should examine your own attitudes to make sure you're being consistent and fair.

- 10. a.** Answers will vary, but here are the standards set out by *CEPA*: to be considered toxic, a substance must be entering, or be able to enter, the environment in such a way that
- it has or may have a harmful effect on the environment
 - it poses or may pose a threat to the environment on which human life depends
 - it poses or may pose a threat to human life or health in Canada
- b.** This means that the government can regulate the substance from its development to its disposal. More specifically, it refers to the following stages:
- development
 - manufacture
 - transportation
 - storage
 - use
 - disposal
- 11.** The directors are wrong. This used to be the rule; but under *CEPA, 1999*, no new substance can be used until it's properly assessed. Businesses developing or wishing to use a new chemical must establish its safety convincingly before they can go ahead with their plans.
- 12. Question 1:** The company's permit to dump waste expired in June, but an inspection showed that dumping had been carried out in July.
- Question 2 (a):** The company was convicted on the charge of dumping refuse into the sea. The judge believed the evidence showing that they'd incinerated waste from July 5 to July 7.
- Question 2 (b):** The judge felt there was lack of evidence to support the second charge.

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Lesson 3: Environmental Assessment and Alberta Legislation



environmental review: *a process of assessing potential harm that a proposed project might do to the environment and weighing that harm against likely benefits*

environmental impact assessment: *a formal evaluation of a project before it takes place to determine its potential environmental effects and to suggest safeguards or alternatives if necessary*

You saw in the preceding lesson that one of the principal objections people had to the original *CEPA* is that it was based on a “react and cure” strategy rather than on a strategy of preventing environmental problems. The new *CEPA* has attempted to correct this focus. The fact is that in recent years the orientation of environmental legislation in Canada has more and more been toward preventing damage to the environment before it takes place; among the chief developments resulting from this approach is a move toward **environmental reviews** of potential damage to the natural world along with what are called **environmental impact assessments**.



That makes sense to me. I mean, it's a lot smarter to figure out what harm a mine, say, or a big dam on a river, is likely to do before it's built than to wait until something happens then say “Oh-oh! Guess we should have thought of that.”

The Canadian Environmental Assessment Act

Environmental impact assessments—or EIAs, as they’re often called—are today used across Canada when projects like dams, pipelines, offshore drilling, nuclear power plants, and airports are being planned. Both the federal government and the various provincial governments have passed legislation requiring EIAs for projects that could damage the environment. The federal statute is the *Canadian Environmental Assessment Act*, which was first proclaimed in 1994 and renewed, with changes to improve the assessment process, in 2003. It’s administered by a body called the Canadian Environmental Assessment Agency, which reports directly to the federal Minister of the Environment.

The following two readings will give you an introduction to the process of environmental impact assessment along with some historical background on the development of environmental assessment in Canada. When you’ve read both selections, answer the questions that follow them.

Perhaps the most significant recent development in the field of environmental protection has been the move toward the use of **environmental impact assessments** (EIAs). Environmental impact assessment has been defined as “the official appraisal of the likely effects of a proposed policy, program, or project on the environment; alternatives to the proposal; and measures to be adopted to protect the environment.”

Examples of projects in Canada that have been subjected to EIAs include dams, pipelines, mining and industrial developments, offshore drilling, nuclear power plants, highways and railways, and harbours and airports. The *Canadian Environmental Assessment Act* defines an “environmental effect” as

1. any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on the physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure or site or thing that is of historical, archaeological, paleontological, or architectural significance, and
2. any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada.

In 1991, the Canadian Council of Ministers of the Environment approved a set of principles for conducting environmental impact assessments. These principles emphasized

- the building in of cost-effectiveness and consistency in the environment assessment process,
- assessing environmental impacts before any irreversible decisions are made,
- giving the public access to information and creating opportunities for public involvement in the process,
- early identification of issues to ensure that they are properly addressed,
- the proponent’s responsibility to pay all costs related to the preparation of an environmental assessment,
- making allowance in the process for the use of innovative procedures such as mediation,
- the necessity for federal-provincial and interprovincial cooperation on environmental assessment.

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In Canada, environmental impact assessment officially began in 1973 when the federal government adopted an EIA and review process for projects undertaken by federal departments and agencies, or which involved federal property or funds. Within a few years, many of the provinces had passed EIA laws of their own. In 1984, the federal government introduced a new, two-stage environmental assessment and review process (EARP) consisting of an initial "self-assessment" phase and a "public review" phase.

In practice, this meant that any federal department or agency contemplating a new undertaking now had to screen the project for its potential effect on the environment. The new rules required that it arrive at one of four decisions:

- The project had little or no environmental impact and could proceed without modification.
- The environmental impact was not adequately known and further study in this area was required before the project could be properly assessed.
- The environmental impact was unacceptable and the project should be abandoned or significantly modified.
- The project had potentially major environmental impact that might raise considerable public concern and therefore it should be referred to an independent panel for review.

The department or agency then had to send its decision to the Federal Environmental Assessment Review Office (FEARO) for scrutiny, and for publication to allow public response.

The Beaufort Sea Project illustrates the "public review" phase of the process. The Beaufort Sea, located in the western Arctic, is home to more than 30 000 people, many of whom are Inuit. In the 1970s, many geologists thought that the region might contain large quantities of oil and natural gas, and companies were eager to begin exploring for these resources.

From 1980 to 1984, an independent Environment Assessment panel headed by Justice Thomas Berger carried out an extensive review of proposed oil and gas development. For three years, the panel of seven members travelled throughout the region that borders the Beaufort Sea and held consultations with 29 potentially affected communities.

In its final report, the panel recommended that future development take the form of relatively small, phased-in projects, to be closely controlled and monitored. It advised that ice-breaking tankers for transporting oil and natural gas should not be used at their current stage of technology. The panel also endorsed the idea that the local communities should have a major role in managing the effects of any development, and that they should gain long-term benefits from these developments.

1. The modern era of environmental assessment arrived in Canada in 1984 when the federal government introduced *EARP*—the environmental assessment review process. This process, which was necessary when a government department or agency planned a project that might have an impact on the environment, consisted of two parts. Briefly describe what each of these parts involved.
2. The Beaufort Sea Project and the Berger Report that came out of it well illustrate the public review stage of *EARP*. Explain what this project was and describe its results.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

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Today's *Canadian Environmental Assessment Act* contains most of the principles on which EARP was based. As well, it incorporates suggestions made in 1991 by the Canadian Council of Ministers of the Environment—a meeting of the provincial and federal environment ministers. For this reason, one of the chief characteristics of the *Act* is its insistence on public involvement and on co-operation between the federal government and the provinces.

Today you'll often see environmental impact assessments being carried out by representatives of both levels of government.



The reading that follows will give you a better picture of the *Canadian Environmental Assessment Act*. When you've finished it, answer the questions that come after it.

The *Canadian Environmental Assessment Act*, 1992 (proclaimed into law in 1994), maintains most of the elements of EARP which it replaced. It incorporates many of the principles approved in 1991 by the Council of Ministers of the Environment. Finally, the *Act* has expanded the scope for public participation by emphasizing the role of public reviews and by introducing mediation as an option. The purpose of the *Act* is to

- ensure that the environmental effects of projects receive careful consideration before responsible authorities take actions in connection with them;
- encourage responsible authorities to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy;
- ensure that projects that are carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and
- ensure that there be an opportunity for public participation in the environmental assessment process.

Section 16(2) of the *Canadian Environment Assessment Act* declares:

16.

- (2) Every assessment of a project by a review panel, or every mediation, shall include a consideration of the following factors:
- (a) the purpose of the project;
 - (b) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of such alternative means;
 - (c) the need for, and the requirements of any follow-up program in respect of the project;
 - (d) the capacity of renewable resources that are most likely to be significantly affected by the project to meet the needs of the present and those of the future.

Where a project is referred to a review panel for assessment, the Minister of the Environment must ensure that persons appointed to the panel "are unbiased and free from any conflict of interest relative to the project." The review panel must make certain that all relevant information obtained is made available to the public and that proper public hearings are held. Review panels have the authority to summon persons as witnesses to give verbal or written

evidence or to produce documents or anything else deemed necessary for conducting the assessment.

Where the Minister is considering mediation, the interested parties must first be identified and then agree to participate in the mediation, before it can proceed. If the mediation process breaks down, the Minister can terminate the mediation and refer the matter to a review panel.

The decision to proceed with a project rests with the "responsible authority" for the project,

such as a particular department of government. The decision to proceed cannot be made until the responsible authority receives the assessment report from the review panel or mediator and duly considers its findings and recommendations. The Act states that the responsible authority may proceed where the project is not likely to cause significant adverse environmental effects or where likely significant adverse environmental effects can be justified.

3. In your own words, explain the four purposes of the *Canadian Environmental Assessment Act* outlined in the reading.
4. One of the principles of this statute is to involve the public in the assessment process. This, of course, takes more time and money than simply appointing government officials to do the job. Some people have also objected to it on the grounds that certain environmental groups seem to mount a campaign on principle against every project that might affect the environment in some way.

What are your views? Should the public be involved in every assessment? Give reasons for your answer.
5. The reading discusses two approaches the *Act* can take for conducting an environmental assessment. Briefly describe each.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



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Going Further

As you've already learned, the *Canadian Environmental Assessment Act* was renewed—after a thorough review—in 2003. The renewed Act contains some changes intended to

- make the assessment process more certain, predictable, and timely
- promote high-quality assessments
- increase opportunities for meaningful public participation

While the specific changes to the legislation aren't significant for your purposes, if you're interested, you might want to take a look at this web page, part of the site maintained by the Canadian Environmental Assessment Agency:

http://www.ceaa-acee.gc.ca/013/whatsnew_e.htm

There, you'll have access to information sheets explaining the changes to the Act. But if you do access this site, why not check some of its other features to learn all you can about the environmental assessment process in Canada?

So what does all this technical-sounding stuff mean when it comes to a real project? What follows is a brief discussion of the review of the Cheviot Mine project—a project to develop a mine in the foothills near Hinton, Alberta. The discussion isn't entirely up-to-date; recently, the issue has once again been resurrected. The article will, however, give you an idea of how the assessment process works. You'll be learning more about the Cheviot Mine project in the next section; but for now, read the discussion and then see how well you can answer the questions.



Legal Action over the Proposed Cheviot Mine

History

In March 1996, Cardinal River Coals Ltd. (CRC) announced plans to develop a huge open-pit coal mine in the Rocky Mountain foothills, south of Hinton, Alberta. The proposed Cheviot mine area is 23 kms by 3.5 kms, and is located just 2.8 km from Jasper National Park, a United Nations World Heritage Site. CRC required approvals under both provincial and federal law (i.e., the *Fisheries Act*) for the construction, operation and decommissioning of the Cheviot open-pit coal mine—triggering a Joint Federal/Alberta Environmental Assessment Panel (the “Joint Panel”) to review the Cheviot Project.

Under federal legislation the *Canadian Environmental Assessment Act* (“CEAA”), a careful assessment of the proposal’s environmental effects is required prior to approval. The Joint Panel conducted a hearing in Hinton, Alberta from January 13 to February 20, 1997 and on April 10, 1997. The Joint Panel issued its report and recommendations on June 17, 1997. The Report recommended to the federal government that the Cheviot Project be allowed to proceed notwithstanding the fact it would have significant adverse environmental effects. Amongst the most serious effects noted were those on carnivores (grizzly bear, wolves, wolverines and cougars), migratory birds (including harlequin ducks) and the integrity of adjacent Jasper National Park. On October 2, 1997 the Canadian Government released its decision to allow the Cheviot Project to proceed with no further environmental assessment.

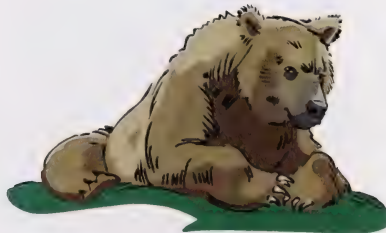
The Court Action

The Alberta Wilderness Association, Canadian Parks and Wilderness Society, Pembina Institute for Appropriate Development, Jasper Environmental Association and Canadian Nature Federation, represented by the Sierra Legal Defence Fund, have commenced an application for judicial review to the Federal Court of Canada asking that the Joint Panel’s environmental assessment be set aside and sent back for reconsideration, and that federal approval be withheld pending the completion of an adequate environmental assessment.

Among the grounds for the organizations’ lawsuit are that the Joint Panel failed to comply with CEAA and the panel’s Terms of Reference, including a failure to properly assess:

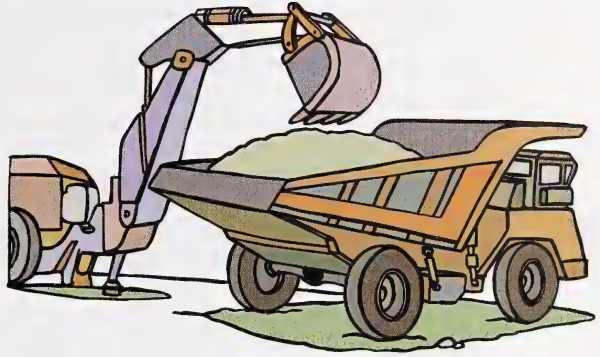
- the effects of the project in combination with other projects in the area (i.e., cumulative effects);
- the mitigation plans aimed at reducing the project’s environmental damage;
- the need for the project;
- the alternatives to the open-pit mine and the environmental effects of those alternatives; and
- the project’s effects on sustainable development.

6. Briefly describe the Cheviot Mine project planned by Cardinal River Coals.
7. Suggest why the *Fisheries Act* should come into play in the assessment of a coal mine in the foothills of the Rocky Mountains.



¹ “Legal Action over the Proposed Cheviot Mine,” Alberta Wilderness Association, n.d. Phone: 403-283-2025 Fax 403-270-2743 Reprinted with permission.

8. A Joint Panel made up of both federal and Alberta reviewers was created to review the proposed project. Is this in keeping with the spirit of the *Canadian Environmental Assessment Act*? Explain your answer.



9. What was the decision of the Joint Panel?
10. Precisely what was the Alberta Wilderness Association, in conjunction with other environmental groups, seeking in this mine dispute?
11. The Joint Panel's decision was made in this situation even though the mining company itself admitted that the mine might significantly damage fish and carnivore habitat. The company had agreed to compensate for this by supplying funds for ecological research and public education. Unless you know something about the Cheviot Mine dispute, this isn't much to go on; all you've got is a bit of history supplied by a group avowedly opposed to the mine. But based on what you have learned, do you think the process of environmental impact assessment was working in this situation? Explain why or why not.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Environmental Assessment in Alberta



The assessment of projects' potential effects on the environment is a cornerstone of environmental law in Alberta. The province's principal statute in this area is the *Environmental Protection and Enhancement Act* (or *EPEA*), which came into force in 1993. This statute establishes a formal process for reviewing projects that could have a negative impact on the environment—a process involving public consultation and input and, in the case of many proposals, a detailed environmental impact assessment.

The *EPEA* isn't the only Alberta legislation requiring that proposed projects go through a process to determine their potential impacts; for example, the *Natural Resources Conservation Board Act*, which deals with the development of natural resources that aren't energy related (such as mining and logging) and the *Energy Resources Conservation Act*, which deals with energy resources like gas and oil, require that new projects go through an assessment process to ensure, among other things, that the harmful effects to the environment will, at the very least, be justified by the benefits of the development. With statutes like these in place in Alberta, all projects with the potential to harm the environment must be reviewed and approved before they can go ahead. What follows will be a look at some of the aspects of Alberta's *Environmental Protection and Enhancement Act*.

In Alberta, the ministry of the provincial government in charge of the environment is Alberta Environment. It was established in 1971, and over its lifetime it has passed much legislation to regulate the environment in the province—for example, the *Clean Air Act*, the *Clean Water Act*, the *Hazardous Chemicals Act*, and the *Litter Act*. With the passage of the *EPEA*, however, these and several other statutes were all consolidated into one piece of legislation.

The *EPEA* is based on a number of principles, most of which should sound familiar to you after learning about the federal government's *CEPA*. Some of the most important ones are

- public participation in environmental protection and public access to information
- a process for the environmental assessment of new projects
- a requirement that spills be reported and cleaned up
- strict enforcement of environmental regulations
- penalties of up to \$1 million for corporations and \$100 000 plus two years in jail for individuals
- personal liability of corporate officers and directors for environmental damage

That last one means that if a company broke the law and did something that damaged the environment, the people in charge of it could be held personally responsible. The idea is that if those in charge know that they—and not just the company—stand to be fined or even imprisoned, they'll be a lot more careful.





- 12.** What do you think of making those in charge of corporations personally liable for offences the corporations commit? Of course, it should make them more careful; but, on the other hand, will people be willing to take positions of authority in corporations if they know they could be personally punished for any slip-up? Explain your views in a paragraph or two; be sure to give your reasons.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

The *EPEA* covers a wide range of environmental issues—drinking water, contaminated sites and reclamation, hazardous substances and pesticides, recycling and waste management, and so on. Many regulations have been passed under the authority of the Act to control a broad range of potential environmental hazards. Investigating all these individually is beyond the scope of this course, but two areas you will look at briefly are

- enforcement and penalties
- the environmental assessment process

Enforcement and Penalties



Even though the *EPEA* stresses the prevention of environmental problems, it recognizes that there must be ways of enforcing its provisions and of punishing offenders. Part 10 of the statute deals with enforcement.

If it appears that a provision in the *Act* has been broken, the first step is to have inspectors and investigators check it out. Members of the public are encouraged to file reports at this stage. If the investigation uncovers a problem, an Enforcement Order can be issued, requiring the offender to shut down operations, fix the problem, undo the damage, or make plans to remedy the situation. If the offender doesn't comply with the Enforcement Order, the next stage is to launch a prosecution in the courts. If necessary, the government can take steps to correct the problem and to recover any costs later from the offender.

If an offender is convicted, the *Act* defines the following three different categories of offence, each with its corresponding penalties as explained in Section 228:

- Category 1: These are minor offences like littering. An individual can be fined up to \$250 and a corporation up to \$1000. These are all absolute-liability offences.
- Category 2: These are more serious, strict-liability offences. Examples are things like making water unfit for consumption and the improper storage of hazardous substances. For these offences, an individual can be fined up to \$50 000 and a corporation up to \$500 000.
- Category 3: These are the most serious offences. It must be proven that an individual knowingly committed the offence. An example would be knowingly releasing a substance that will harm the environment or providing false information to the authorities. For offences like these, an individual can be fined up to \$100 000 and sentenced to two years in jail; a corporation can be fined up to \$1 million.

In sentencing someone convicted of an offence under the *Act*, a judge can take factors like the following into account:

- the extent of the damage
- whether the offender intended to commit the offence
- whether the offender made money by committing the offence
- whether the offender has committed other environmental offences
- whether the offence could easily have been prevented

13. The PCB Company was charged with storing pesticides in an unsafe manner.

- a. What is the maximum penalty it could face?
- b. If the company demonstrates that it took every reasonable precaution in how it handled the pesticides, could this defence win an acquittal? Explain your answer.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

The Environmental Assessment Process

As you read earlier, the *EPEA* sets out a process for assessing the environmental impact of proposed projects. All such projects must be brought to the attention of those who administer the *Act*. With some projects, a formal review is mandatory—for instance, in the case of pulp mills. With others, the *Act* gives guidelines to see if a formal assessment needs to be carried out. For projects requiring a mandatory review, an EIA (Environmental Impact Assessment) report is done automatically as part of the review; for others, the procedures may not require an EIA report, but the public must be informed that the project is being screened.



If an EIA report is done, it must include things like a description of potential effects on the environment, both positive and negative; likely social, economic, and cultural impacts of the project; plans to mitigate possible harmful effects and to respond to emergencies; and identification of human-health issues.

Whether or not an EIA report is done, while a review of a project is being carried out there must be an opportunity for members of the public to have input. Any persons directly affected by the proposed project can submit a written “statement of concern” in which they explain their concerns with the proposal. All information is to be made public as well.

When all concerned have had their say, the authorities of Alberta Environment have to decide whether or not to give approval to the project. If approval is given, it will likely contain terms and conditions that must be met if the project is to be allowed. If approval is denied, the organization behind the project has the right to appeal this decision to the Environmental Appeal Board, a body created by the *EPEA*. Similarly, if approval is given, people directly affected by the environmental impact of the project may appeal to the Environmental Appeal Board.



That sounds great, but I’m not sure about allowing only people directly affected to have input. I mean, people living near a pulp mill might not be very aware of the possible impact, while environmental specialists who are aware couldn’t have a say because they aren’t directly affected.



Good point—and a serious concern. Of course, those affected can—and should—seek help from specialists in the area—environmentalists, lawyers, scientists, and so on. And remember, environmental groups can mount campaigns to raise public awareness even when they can't submit formal statements of concern during an assessment. In actual practice, legitimate environmental groups have usually been given the opportunity to make their case.



- 14.** What's your opinion? Should anyone concerned about the environment have the right to submit statements of concern, or should this right be limited to people directly affected—such as farmers downstream of a mill or Aboriginal peoples who hunt in an area to be clear-cut? Present your ideas in a paragraph or two, or, if you can, take sides with another person and debate this question. Be sure to give your reasons.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

In Section 3 you'll be looking a bit more closely at the procedures used for a review of an environmental issue. At this point, what's important is that you know that such reviews are carried out and what the implications are for the environment.

The *EPEA* has, as you know, consolidated within itself a number of former Alberta statutes dealing with environmental issues, thereby reducing the number of such acts significantly. There are, however, still other laws in Alberta dealing with environmental matters; but for the most part, they lie beyond the scope of this course. There's a great deal of legislation designed to protect and manage our natural resources and to balance environmental concerns with the needs of the economy. The question is how well those laws are working—something you'll be looking at more closely in the next section.

- 15.** You've encountered a good deal of legislation, both federal and provincial, in the last few lessons. Now test your knowledge of this legislation by identifying the statute referred to in each of the following:
- a.** This federal statute ensures that the environmental impact of projects is evaluated before the projects are undertaken.
 - b.** This Alberta statute sets up a process for reviewing projects like mining and logging.



- c. This federal statute prohibits the dumping of deleterious materials where damage can be done to aquatic animals.
- d. This federal statute regulates pesticides and herbicides.
- e. This federal statute governs what goes on in our national parks.
- f. This British statute is now called the *Constitution Act, 1867*.
- g. This federal statute is the country's chief environmental statute.
- h. This federal statute prevents ships from polluting Canadian waters.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer questions 4 and 5.

Suggested Answers

1. The first part of the process required the agency or department planning a project to carry out its own investigation into possible environmental effects and arrive at one of four decisions:
 - proceed with the project
 - conduct further study
 - abandon the project or change it significantly
 - refer the study of environmental impacts to an independent panel

The second part of the process required the agency or department to send its decision to FEARO (the Federal Environmental Assessment Review Office), which publishes it and allows a public response to the decision and the findings on which it was based.

2. In the 1970s, it was believed that there were huge reserves of oil and gas waiting to be mined in the Beaufort Sea in Canada's western Arctic. From 1980 to 1984, an Environment Assessment panel headed by Justice Thomas Berger intensively investigated the potential impact that mining these reserves would have on the environment of the area and on the Aboriginal peoples living there. In his report, Justice Berger recommended small, phased-in projects so as to minimize environmental damage and harm to the people. The report didn't want ice-breaking tankers used because of potential environmental damage, and it encouraged giving local communities a major role in managing any development in the area.

This assessment of the Beaufort Sea area really began a new era in Canada's approach to developing natural resources and assessing possible effects that development might have on the local environment and on the people who depend upon it.

3. The four purposes are

- to carefully consider possible environmental effects of a project before it's undertaken
 - to encourage sustainable development
 - to make sure any projects carried out in Canada don't damage the environment outside the country (for example, polluting the air that wafts over neighbouring areas)
 - to allow public participation in the assessment process
4. Answers will vary. Before the *Canadian Environmental Assessment Act* became law, criticisms were frequently made that major decisions affecting the environment we all depend on were usually made behind closed doors. The *Act* was an attempt to correct this situation. Certainly this makes the process more complex and time-consuming, but it does ensure that all points of view will be heard. Most people agree that the best way to reach a wise decision is to allow people expressing divergent viewpoints to have their say.

Whatever position you took on this issue, were you able to defend it with clearly explained arguments?

5. The two methods are by way of

- a review panel
- mediation

The reading doesn't really distinguish these two processes very clearly. Basically, a review-panel approach involves setting up a group of independent people to look into the project, summon witnesses, and come to a decision. Mediation is used more often when there's a clear dispute between two parties. Here, if the parties agree, the Minister can attempt to help them sort out their differences and come to a mutually acceptable compromise. If this process breaks down, a review panel can be set up.

6. In 1996, Cardinal River Coals Ltd. proposed to develop a large open-pit coal mine in the foothills of the Rockies near Hinton and very close to Jasper National Park. Clearly, the environmental impact of the mine would be likely to be felt in the park which, aside from being a national park in Canada, has also been declared a World Heritage Site by the United Nations.
7. The *Fisheries Act* forbids the discharge of deleterious substances anywhere where it could harm aquatic animals. The proposed mine might result in such substances entering waterways in the surrounding area.
8. Yes, one of the principles of the *Canadian Environmental Assessment Act* is co-operation with the provincial governments.
9. The Joint Panel decided to allow the project to go ahead despite the significant harm it would do to the local carnivore populations and to Jasper National Park.
10. These environmental organizations want the Federal Court of Canada to review the Joint Panel's environmental assessment in hopes that the court will set it aside and order a new one to be done. The groups want the federal government to withhold its approval of the project until this process has been completed.

- 11.** Answers will vary. The Cheviot Mine controversy continues to this day. Environmental groups like the Alberta Wilderness Association argue that, despite its avowed commitment to environmental protection and the assessment process, the Alberta government is putting economic development ahead of environmental concerns. Of course, not everyone agrees. If the Cheviot mine issue interests you, you'll have an opportunity to learn more about it in the next section.
- 12.** Answers will vary. Note carefully that according to the *Act*, officers of a corporation can be held liable only if they authorized, agreed with, or participated in the offence. No one is liable for an offence with which he or she was totally unconnected.
- 13. a.** This is a Category 2 penalty; the maximum fine for a corporation is \$500 000.
- b.** Since this is a strict-liability offence, the defence of due diligence can be allowed. That means that if the company can satisfy a court that it did, in fact, take every reasonable precaution that it could have been expected to take, it could win an acquittal.
- 14.** Answers will vary. On the one hand, it can be argued that if everyone concerned about the environment (including extremists) could submit statements of concern and have them dealt with properly, the process would become totally unmanageable and far too time-consuming. On the other hand, it can be pointed out that in many cases people who stand to be directly affected may not understand the potential harm and they're likely not to understand the legal processes available to them. It's also true that, in a sense, harm to the environment affects everyone. All Albertans stand to lose if our forests are clear-cut or our lakes polluted.
- In actual fact, legitimate environmental groups have usually been able to have their input into the process, and they can always mount campaigns of other sorts. Environmentalists can also work with people who are directly affected, and they can make the public aware of the potential environmental impacts of any proposed projects.
- 15. a.** the *Canadian Environmental Assessment Act*
b. the *Natural Resources Conservation Board Act*
c. the *Fisheries Act*
d. the *Pest Control Products Act*
e. the *Canada National Parks Act*
f. the *British North America Act*
g. the *Canadian Environmental Protection Act, 1999*
h. the *Canada Shipping Act*

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Lesson 4: International Efforts



Probably the environmental issues you're most familiar with are global, rather than local, in nature. Certainly you might have heard of the Cheviot Mine dispute or the *Exxon Valdez* oil spill, but these are isolated incidents that have an environmental impact that's largely limited to the area where they occurred. Rather than incidents like these, the environmental problems that you're continually hearing about are far more likely to be things like global warming, the depletion of the ozone layer, and the extinction of animal and plant species worldwide due to factors like climate change and loss of habitat.

When it comes to global problems like these, Canada—and even less, Alberta—can't accomplish much by acting alone. Certainly legislation can be passed limiting emissions of toxic substances (such as the law that eliminated leaded gasoline a few years back); but if other countries continue to pump poisons into the environment, the actions of a relatively small country like Canada (small in terms of its population and contribution to global pollution) aren't terribly significant. What's needed for global problems is global action; and that calls for co-operation among the governments of different countries.

treaty: a contractual agreement made between two or more separate political authorities—such as sovereign nations or states


Once you have two or more countries signing agreements to take actions like cut emission levels or clean up shared bodies of water, a problem emerges that doesn't exist when a country or province is passing laws for itself. That problem is one of enforcement. If the Government of Canada passes a law and a Canadian individual or corporation breaks it, the governmental authorities can prosecute the offender and see that penalties are paid; but if a country fails to live up to a **treaty** it's made with other countries, who's going to enforce the agreement? Agreements between countries are dependent on the goodwill of the countries that sign them—and their desire for the respect of the international community.


But if someone breaks a contract, you can take the person to court. Aren't there international courts? And what about global organizations like the United Nations? Can't they enforce international agreements?



There is a world court—the International Court of Justice—but the problem is enforcement of its decisions. As yet, no countries are willing to enforce environmental agreements through military action; and certainly the UN isn't about to do this either. Countries that don't live up to their agreements may have to suffer international embarrassment but usually not much else.



- 
1. What are your ideas on this problem? How do you think the international community ought to treat countries that don't live up to their agreements with other countries to control pollution? Explain your ideas fully and back them up with reasons. If you're working with a friend or study partner, brainstorm ideas.



Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

Despite this problem, however, signing international agreements seems to be the only possible way to tackle global environmental problems; and Canada has taken an active role in this process.

Because Canada and the United States share a common border (the world's longest undefended border, as we keep hearing), it's natural that these two countries share environmental concerns. Both water and air flow continually across the Canada/U.S. border; and if either country is serious about keeping the environment clean, both have to be involved. Of course, because the U.S. is so much larger, it has historically produced much more of the pollution that threatens both countries.

An example of a Canada/U.S. environmental treaty is the 1909 *Boundary Waters Treaty*, which sets out the principles and methods of preventing and resolving water-based disputes between the two nations. This treaty established a body called the International Joint Commission, with members from both Canada and the United States. In recent years, this commission's work is largely concerned with cleaning up the Great Lakes (which had become terribly polluted due to the wastes of large cities and industries that surround them) and preventing further pollution.



In the ongoing attempt to keep the Great Lakes clean, Canada and the U.S. signed another agreement in 1978—the *Great Lakes Water Quality Agreement*. In this agreement, the two countries agreed to restore and keep up the “biological integrity” of the Great Lakes Basin Ecosystem. Forty-three so-called “hot spots”—or areas of concern—were pinpointed for clean-up. Twelve of these are in purely Canadian waters. Within Canada, all three levels of government have worked to honour their commitment to the agreement to clean up their polluting. On the other side of the border, Americans have been doing the same.

Of course, Canada has signed international agreements on the environment that are much broader in scope than the Great Lakes clean-up. *The Stockholm Declaration of 1972*, endorsed by both Canada and the U.S., along with other countries, resulted from the Stockholm Conference. This was the first international effort to draw worldwide attention to environmental problems. The conference’s *Declaration on the Human Environment* established a long-term action plan. Principle 21 of the *Declaration* stated that

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own natural resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction.

2.
 - a. Paraphrase this principle from the *Declaration* in your own words.
 - b. What are your thoughts on this principle? By today’s standards, is it very radical? Explain your answer.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

To learn a bit about the history of Canada's global role in the environment issue, read the following selection. When you've finished, answer the questions that come after it.

Canada's international efforts to protect the environment involve multinational treaties, programs, and conferences. Canada has played an active role in international efforts to devise ways of addressing environmental issues.

In the early 1990s, Canada and the United States negotiated an agreement aimed at protecting both countries from transboundary air pollution. Canada had campaigned hard for this agreement because studies had shown that approximately half of the acid rain falling on Canada was being caused by sulphur dioxide emissions in the United States. The agreement created a bi-national forum for reporting and verifying progress on air quality issues.

Under a United Nations' program called "Man and the Biosphere," Canada has designated several sites as **biosphere reserves**, that are intended to conserve threatened ecosystems and to preserve irreplaceable genetic material. In 1992, Canada signed the *Convention on Biological Diversity*, committing itself to enacting a federal endangered species Act, a promise it has yet to fulfill. Canada has also signed the *Convention on International Trade in Endangered Species*.

In 1987, Canada joined 23 other countries in signing the **Montreal Protocol on Substances That Deplete the Ozone Layer**. By 1994, 133 countries had signed this pact. The signatories have agreed to implement domestic regulations to gradually phase out the consumption and production of CFCs, halons, and other ozone-depleting substances. Canada is meeting its commitments through regulations introduced under the *Canadian Environmental Protection Act*.

Perhaps the largest international meeting to date on the global environment was the Earth Summit held in Rio de Janeiro in 1992. Approximately 30 000 people, representing 100 countries, attended this 12-day event. Their argumentative mood was a sign of deep rifts that separate the nations.

Evidence was offered that global warming was occurring and that the main culprit was carbon dioxide emissions. Reportedly, the industrialized nations of Europe, North America, and the former Soviet Union were producing 70 percent of these emissions. Delegates were called upon to agree to a rapid and significant decrease in CO₂ production.

The United States stood alone among the wealthy, industrialized countries, by refusing to agree to significantly reducing its carbon dioxide output. It argued that the measures necessary to achieve a major reduction in emissions would be too costly. Poorer countries indicated that they would be willing to lower their CO₂ emissions if the wealthy countries offered sufficient financial and technical assistance. Eventually, 24 of the participating nations agreed to a number of modest goals they were to achieve by the end of the century.

In April 1995, representatives from 130 nations met in Berlin in an attempt to achieve further progress on CO₂ reduction. While delegates reported some progress, it was clear that the desire of countries such as the United States, Canada, Australia, and Japan to protect their economies continued to block a significant breakthrough.

3. In the early 1990s, Canada and the United States signed an agreement on air pollution. Why was this agreement of particular importance to Canada?

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4. Make a chart like the following and write point-form notes on the three international initiatives indicated in it.

Man and the Biosphere	
Convention on Biological Diversity	
Montreal Protocol	

5. The 1992 Earth Summit in Rio de Janeiro was a major attempt to achieve international co-operation on environmental issues. The world had great hopes for the Rio conference, and there was much fanfare associated with it. However, when the dust had settled, not a great deal had been accomplished. Explain how the failures of the Earth Summit illustrate the problems involved in getting countries to work together to solve the world's environmental problems.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.


In 1997 another international conference on the environment was held in Kyoto, Japan. There, world leaders discussed how they could best act on their promises at the 1992 Earth Summit to fight global warming.




This may sound kind of dumb, but could you please explain just what global warming is, what causes it, and why it's dangerous?

Most environmentalists agree that carbon-based (greenhouse) gases—from factories, cars, and homes—accumulate in the atmosphere and keep the sun's heat from escaping. The prediction is that over the next few decades, the earth's temperature will rise, perhaps resulting in catastrophic changes—like the melting of polar icecaps and the consequent flooding of low-lying countries.





But not everyone agrees that global warming is as big a problem as it's made out to be.



No one knows for sure just what will happen in the future, but already we're seeing weather changes that may—or may not—be related to global warming. Most scientists agree that it's best to err on the side of caution—to take steps now to prevent a possible disaster a decade or two down the road.

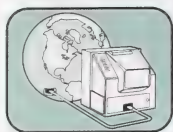
Under the *Kyoto Protocol*—an agreement that resulted from the conference—industrialized (and rapidly industrializing) countries agreed by 2012 to bring their emissions of these greenhouse gases down to 6 percent below where they were in 1990 and to develop efficient use of energy, promote the development of cleaner energy sources, and put into effect more sustainable agricultural practices. The agreement was then taken back to the governments of the participating countries, and over the following years those governments were expected to ratify—that is, officially agree to—the *Protocol*. So far, almost 100 countries have done this. Canada is one of those countries, having ratified the *Protocol* in December, 2002. The United States has refused to ratify *Kyoto*, claiming that it would have too negative an effect on the country's economy.

Naturally, the United States isn't the only country that has concerns about the effects of *Kyoto*. In Canada, Alberta has expressed serious reservations about the *Protocol's* effect on the oil and gas industry, and some scientists believe that the science behind the Kyoto agreement is flawed. By international agreement, the *Protocol* won't become legally binding until at least 55 countries, accounting for at least 55 percent of the world's greenhouse gases, have ratified it. While the 55-country mark has easily been surpassed, as yet these countries account for only about 40 percent of 1990 emissions. This means that the whole project may yet come to very little in the way of real improvement of the Earth's environment.

The difficulties that proponents of the *Kyoto Protocol* have experienced in getting countries to ratify it—and the disagreements that have erupted in countries like Canada over whether or not the *Protocol* is a good or bad way to approach global environmental issues—underscores the difficulties that arise whenever attempts are made to tackle those issues by means of international agreements. And yet, if serious environmental situations aren't dealt with at an international level, how else can they ever be corrected?



Going Further

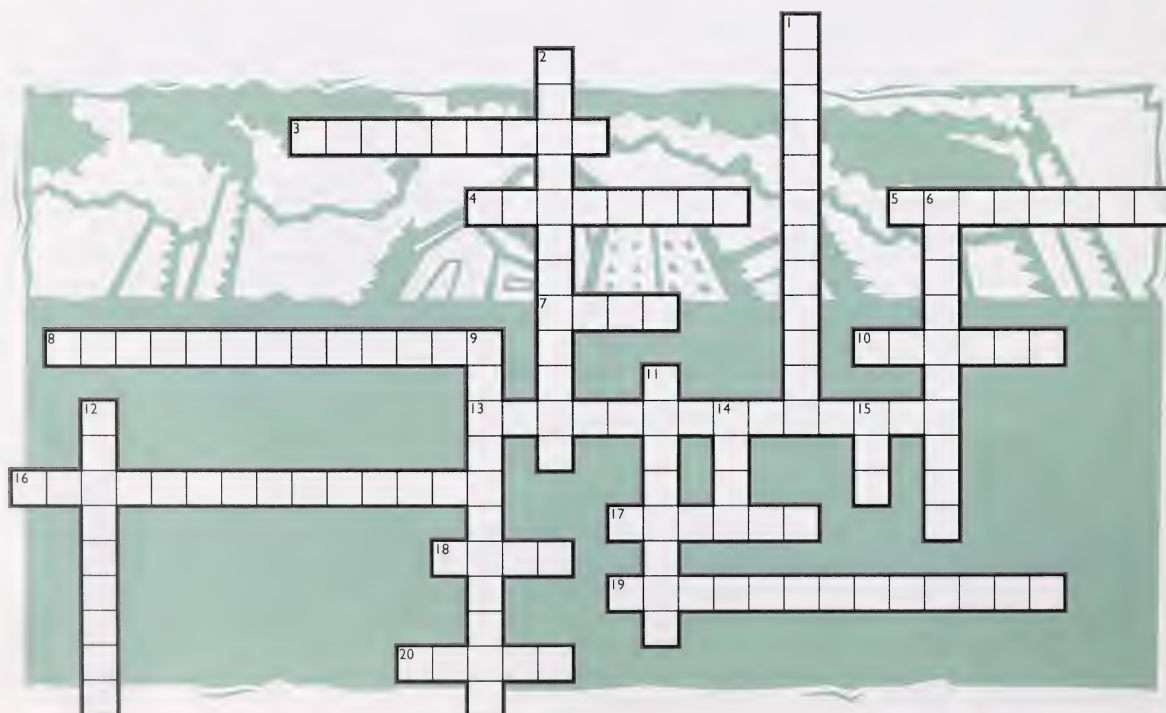


While the issues surrounding the Kyoto Protocol are of immense importance on a global scale, investigating these issues goes far beyond the scope of this course, but if you're interested, you'll be able to find a great deal of information on the Internet. Just go to any search engine and enter the search words *Kyoto Protocol*.

The issues surrounding *Kyoto* comprise one of the principal environmental concerns of the moment; it's an issue you really should be aware of, so if at all possible, take the time, do some research, debate the matter with other interested people, and try to take a position.

Ultimately, living up to Canada's international commitments on the environment demands action on the part of the federal and—to a lesser degree—the provincial governments. The issue boils down to how tough Canada's internal pollution laws are and how well they're enforced. International agreements are vital, but they work only to the degree that the governments of the countries that sign on live up to their commitments.

- Throughout Section 2, you've been introduced to a good deal of terminology and legislation. Test your knowledge of some of the terms and names you've encountered in this section by completing the crossword puzzle that follows. Try to do it without looking back, but be sure to review anything that gives you trouble.



Across

3. *Man and the* _____: a UN program in which Canada is taking part
4. _____ liability offence: for example, littering under Alberta environmental law
5. _____ and civil rights: a provincial jurisdiction
7. Canada's chief environmental statute
8. the *Canadian* _____ *Assessment Act*: a federal statute calling for assessments of proposed projects
10. laws passed by municipal governments
13. "Peace, Order, and _____" (two words)
16. jurisdiction over areas not specifically stated (two words)
17. a contract made between separate political authorities
18. a federal review process introduced in 1984
19. the *Canada* _____ *Act*: a federal statute governing Jasper, for example (two words)
20. the Japanese site for an international environmental conference

Down

1. the fundamental law on which a nation is based
2. authority; the power to make laws
6. offences carrying minor penalties
9. laws passed by a governing body
11. the _____ *Protocol*: a 1987 agreement on ozone-destructive chemicals
12. the _____ *Act*: a federal statute prohibiting the dumping of harmful substances where they could affect aquatic animals
14. Alberta's principal environmental law
15. a formal, written study of the potential effects of a project on the environment

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 6.

Suggested Answers

- Answers will vary. This is, of course, a much more complex issue than this discussion can describe. International law is a developing field, but ultimately it's up to sovereign nations to decide whether or not they abide by international decisions. A country that fails to do this may be censured and suffer international condemnation, and other countries may break off trade, financial aid, and diplomatic relations; but that's about the extent of it.
- Paraphrases will vary, but essentially this principle states that individual countries have the right to make their own environmental policies on how to retrieve and make use of their natural resources. However, each country has a responsibility not to do anything while exploiting those resources that could damage areas outside their borders.
 - Responses will vary, but most people would probably agree that by today's standards this is a very conservative principle. It means that countries are free to be environmentally irresponsible within their own borders. Of course, the case could be made that since things like polluted water and air don't respect international boundaries, much of the pollution any country generates will ultimately harm other countries.
- This agreement was very important to Canada because about half of the acid rain that was damaging Canada's forests was created by sulphur dioxide generated in the United States.
- Charts will vary somewhat. Compare yours with the one that follows.

Man and the Biosphere	<ul style="list-style-type: none"> • UN program • Canada: designated <i>biosphere reserves</i> to preserve threatened ecosystems
Convention on Biological Diversity	<ul style="list-style-type: none"> • signed in 1992 • Canada: agreed to federal endangered species act • promise not yet fulfilled
Montreal Protocol	<ul style="list-style-type: none"> • Canada and 23 other countries signed, 1987 • 133 countries signed by 1994 • agreement among countries to phase out chemicals destroying ozone layer • Canada: using <i>CEPA</i> regulations to meet commitment

- At the conference in Rio, major rifts appeared between the countries in attendance. While most of the industrialized countries, which were producing most of the pollutants causing global warming, agreed to cut emissions, the United States (the world's chief industrial power) refused. Poorer countries agreed to cut their emissions but only in return for financial and technical help. When consensus was finally reached, the compromises resulted in very watered-down agreements.

6.

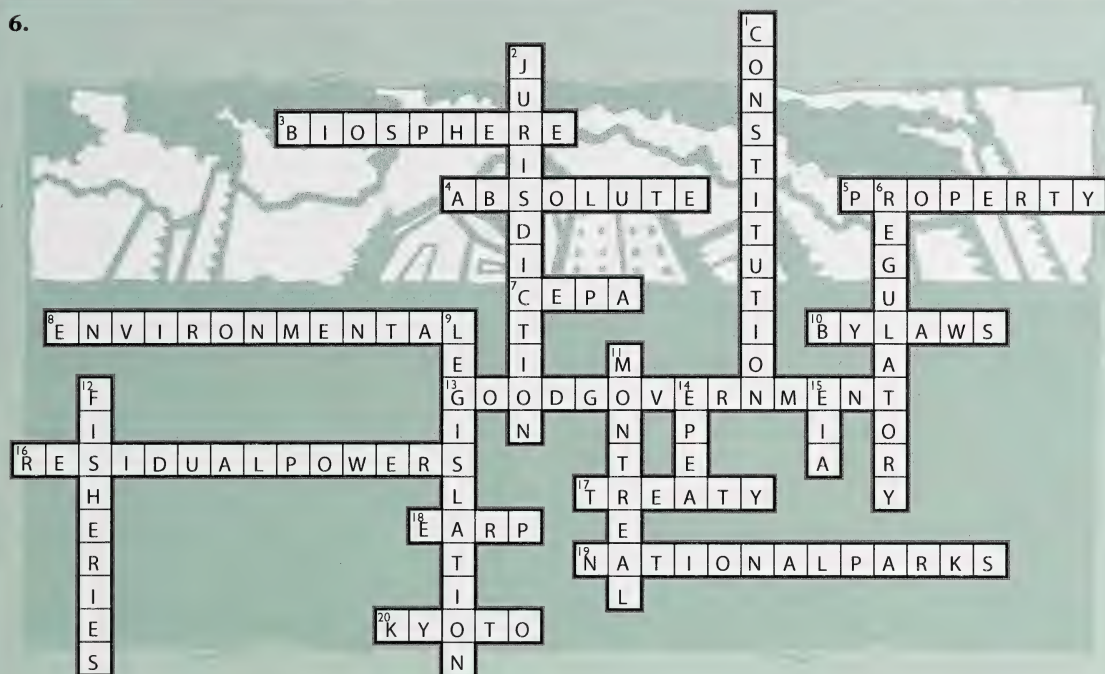


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Section 2 Conclusion



In Section 2 you looked at some of the principal environmental legislation of both the Canadian and Alberta governments. You should now have an idea of the sort of legislation that's in place and of some of the issues that surround it. But, how effective is this legislation? How does it really work? How much input does the public actually have in making decisions regarding the environment? What actually goes on in the assessment of a proposed project? Questions like these must still be examined, and this is what you'll be doing in the next section.

SECTION 3

Organizations, Reviews, and Challenging Issues



From time to time in the first two sections of this course, mention has been made of high-profile legal cases involving environmental concerns—the *Exxon Valdez* and Cheviot Mine cases, for instance. Mention has also been made of environmental groups, such as the Alberta Wilderness Association and the World Wildlife Fund. In this section you'll be looking at situations where private organizations like these have taken legal action to stop projects that they felt would harm the environment.

When you've finished this section, you should be able to describe the role organizations like these play and to identify some key cases they've been involved in. You should also be able to explain how a public review of a project works and to identify and describe challenging issues in the area of environmental law. You'll be doing some research into one such area and presenting your own ideas in a short report.

Lesson 1: Environmental Organizations



How many environmental groups can you name off the top of your head?

Many Canadians who are asked this question can come up with Greenpeace, an organization born in Canada and which now has chapters in over 30 countries. You might come up with the names of a few more groups dedicated to protecting the Earth's natural ecosystems or some aspect of them; but it's unlikely you'd be able to name more than three or four with absolute assurance. One reason for this is that there are so many independent environmental groups today that they're hard to keep track of. One estimate puts the number of charitable organizations working on environmental issues in Canada at over 3000.



1. Before going on, see how many organizations of this sort you can name. If you're working with a friend, get together and brainstorm for a few minutes.

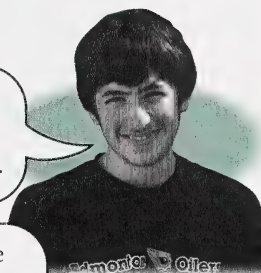
Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.



Just what is an environmental organization? Of course, groups of this type vary in how they're set up, ways in which they're funded, and the sorts of environmental issues that concern them. They also differ in the methods they use to achieve their purposes—from educational campaigning at one extreme to acts of **civil disobedience**—and sometimes even what's been labelled *ecoterrorism*—at the other.

civil disobedience: the deliberate refusal to obey a law in order to pressure the government to change the law

I thought environmentalists were just a bunch of so-called eco-freaks who went around chaining themselves to trees to keep loggers from doing their job.



That's certainly one method that some environmentalists have used in attempts to save old-growth forests, and naturally the media pick up on that sort of thing because it makes good footage for the evening news. But most environmental organizations run very sophisticated campaigns in their attempts to encourage environmentally responsible practices.



Though things like civil disobedience—and even the odd blatant publicity stunt—generate a lot of press, most activities carried out by environmental groups are completely legal and pose no danger or inconvenience to the public. But just what sorts of methods do organizations of this type use to achieve their goals? Though different groups stress different methods, most of them engage in activities like the following:

- raising public awareness of environmental threats through methods ranging from educational campaigns to publicity stunts
- **lobbying** government officials in an attempt to get pro-environmental legislation passed and enforced
- conducting scientific research in areas that affect the environment
- taking an active role in the process of environmental reviews
- taking independent legal action against companies (and the government itself) thought to be breaking environmental laws
- working with government and industry to achieve environmental objectives
- working with other environmental organizations
- raising funds to carry out their programs

lobby: to present a specific viewpoint on issues to the government in the attempt to persuade it to create, repeal, or change laws so as to support that viewpoint

To give you a better idea of the sorts of environmental organizations there are, what follows is a quick profile of a few such groups. There are, of course, many other environmental organizations just as worthy of discussion, but these few have been selected to give you an overview of what organizations like this are and how they function.

Greenpeace Canada

Greenpeace began in 1971 when a small crew of environmentally concerned people sailed out of Vancouver to protest U.S. testing of nuclear weapons off the west coast of Alaska. By drawing international attention to the problem, Greenpeace was substantially successful in its mission, and it went on to become one of the world's premier environmental organizations. Today, Greenpeace has more than three million members worldwide (over 250 000 in Canada), and it continues to fight for a safer environment, largely by drawing public attention to problems and embarrassing governments into taking action.

Greenpeace became famous in its early years for using daredevil tactics to raise public awareness of things like nuclear testing and irresponsible whaling practices, but today it has a broad range of programs and uses more sophisticated methods of campaigning. Among some of the major issues Greenpeace has fought are

- clear-cutting Canada's old-growth forests
- overfishing on both Canada's east and west coasts
- the production and use of chemicals toxic to human beings and to plant and animal species
- the greenhouse effect and the threat of global warming
- the threat posed by the growing use of nuclear energy
- the threat of genetically engineered foods



Going Further

For a much fuller look at the Greenpeace organization and its activities, go to the following website. Once there, look especially at the "About Greenpeace" and "Campaigns" panels.

<http://www.greenpeace.ca/e/index.php>



The World Wildlife Fund



The World Wildlife Fund (WWF) is an organization dedicated to “saving life on Earth, through the conservation of nature and ecological processes.” The World Wildlife Fund Canada is this country’s chapter of this organization; it pursues its goals with methods like these:

- mounting education and outreach campaigns
- investing in science and research and advocating only solutions backed up by this research
- working with government and private industry to achieve its ends rather than by staging confrontations
- seeking commitments in the area of wildlife conservation in Canada and around the world

One thing the World Wildlife Fund has done to draw attention to environmental concerns is to give governments an annual “report card” on their environmental records, and beginning in 2003, the organization has added a more exhaustive “Nature Audit” on the state of Canada’s environment in general.

The following article appeared on the Internet in May 2003. Read it over and answer the questions based on it.

Canada's Ecosystems Under Threat, Says WWF

CTV.ca News Staff

The World Wildlife Fund of Canada released a damning report about the state of Canada's environment Monday, and urged immediate action to save some of our country's last great natural environments.

WWF spent two years compiling its nature audit, using 400 years of historical records to study the impact of human activity on Canada's natural habitats. It found land, lakes and oceans on the verge of collapse, pressured by overuse.

"To use a financial analogy, we're not protecting our savings, we're not spending wisely enough, and we're badly overspent in some parts of the country" says WWF-Canada President Monte Hummel.

One of the most pressing concerns is the influx of invasive species, such as zebra mussels, which have caused biological chaos and economic difficulty for forestry and marine industries, the report says. They list 150 species that are already interfering with Canada's biological systems.

The report calls on Ottawa to co-ordinate a national prevention plan to ensure dangerous foreign species can't enter the country. Right now, the fund estimates only two per cent of commodities coming into Canada are adequately inspected.

The verdict wasn't all negative. WWF-Canada praised conservation efforts made by both government and industry, such as the creation of 10 new national parks. It also noted the voluntary adoption of conservation policies by some forestry companies. But it says more needs to be done.

"Overall, Canada has made significant commitments to conserve nature," says the report. "However, we are struggling to turn all of this process into on-the-ground success at the scale of intervention required to adequately respond to the conservation need of the nation."

Oceans have become stressed from intensive fishing and crowded by oil rigs drilling offshore, all of which have contributed to the collapse of fish stocks, the degradation of waters on both coasts, and disappearance of some large marine species.

WWF's report *The Nature Audit* says it's time to "protect, manage and restore" now, not when species are on the verge of extinction or natural resources are all but used up.

The WWF plans to publish *The Nature Audit* every two years. The next will appear in May 2005.

2.
 - a. The article cites the Nature Audit's concern with the influx of "invasive species." Using the article itself, a dictionary if necessary, and any other resources at your disposal, explain what invasive species are and why they're such a big problem.
 - b. What steps does the Nature Audit urge the Government of Canada to take to deal with the invasive-species problem?
 - c. What events or actions does the Audit point out as positive indications?
 - d. What two situations does the Audit cite as damaging the oceans surrounding Canada?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

¹ "Canada's Ecosystems Under Threat, Says WWF, CTV.ca, 27 May 2003. Reproduced by permission.

Going Further

Here's the address of the World Wildlife Fund Canada website:

<http://www.wwf.ca/wwf.asp>

Once there, you might want to check out the Nature Audit yourself, but take a bit more time to look into the various programs and activities offered by the WWF Canada. Is there anything you could do to help them in their campaigns to protect Canada's environment?

The Sierra Club of Canada

The Sierra Club was founded in 1892 to protect the wilderness of the Sierra Nevada in Eastern California. Since that time the club has expanded its interests and its geographical range, becoming active in Canada in 1963. The Sierra Club established a national Canadian office (in Ottawa) in 1989, and three years later the Sierra Club of Canada came into being. Today the organization has active chapters in every region of the country.

Since its creation the Sierra Club of Canada has been involved in a number of environmental issues and controversies; among the issues it's become involved with are campaigns to

- improve energy efficiency to combat global warming
- prevent clear-cut logging in Canada's forests
- conserve biological diversity in plant and animal species
- draw public attention to the risks posed by the use of pesticides
- work for the preservation of wilderness areas
- pressure the Canadian government to live up to its international commitments made in Rio and Kyoto



Going Further

Here's the website of the Sierra Club of Canada. Take a look and see what you can learn about this organization.

<http://www.sierraclub.ca/>

Is there any way you could become involved in helping the Sierra Club in its campaigns?

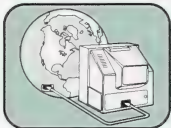
The Canadian Parks and Wilderness Society

The Canadian Parks and Wilderness Society (CPAWS) calls itself “Canada’s grassroots voice for wilderness.” Founded in 1963 as the National Provincial Parks Association of Canada, CPAWS today has 13 regional chapters and many thousands of members. The organization is dedicated principally to the protection of wild lands and wildlife; it focuses chiefly on parks and other wilderness areas, making sure that the laws that protect such areas are obeyed. Over the years, CPAWS has helped protect over 40 million hectares of Canadian wilderness. CPAWS has helped enormously in the expansion of the national parks system and the halting of commercial development inside the parks. It has played a major role in the creation of 2.4 million new hectares of parks in Ontario alone, and in the establishment of the 5.6 hectare Muskwa Kechika Management Area in British Columbia. Throughout its history, CPAWS has also worked tirelessly at educating Canadians about the importance of preserving our wilderness.

Going Further

Here’s the CPAWS website. See what else you can learn about this important environmental organization.

<http://www.cpaws.org/index.html>



The Alberta Wilderness Association



One of the most active environmental organizations in Alberta is the Alberta Wilderness Association (AWA). Founded in 1965 by a group of back-country enthusiasts, the AWA today is involved in a wide variety of campaigns aimed at protecting Alberta’s wilderness lands and waters. The principal objectives of the AWA are to do the following:

- promote the protection of wilderness areas in Alberta
- restore Alberta's natural ecosystems
- promote communication with government and industry on matters concerning the environment
- educate Albertans on the importance of wilderness preservation
- foster in Albertans a "sense of connectedness" with wilderness lands and waters

It would be tough to find an issue or a battle in the area of Alberta wilderness preservation in which the AWA hasn't played a major role. You'll be looking at some of the activities this organization is involved in shortly.

Going Further

Here's the web address of the AWA. See what you can discover about this important Alberta environmental group. Chances are that because the AWA deals with issues within Alberta, its campaigns and the areas it seeks to protect will be somewhat more familiar to you than others.

<http://www.albertawilderness.ca/>



The Western Canada Wilderness Committee

The Western Canada Wilderness Committee (WCWC) was formed to work for the conservation of Canadian and international wilderness though, as its name suggests, its principal focus is Western Canada.

This organization involves itself chiefly in research and education and strives for accuracy of information, the avoidance of illegal methods of achieving its ends, and the promotion of sustainable development and the preservation of wilderness areas in all their biodiversity. This group has been most active in British Columbia; but in 1991, an Alberta chapter was opened. Its first campaign was to stop logging in Wood Buffalo National Park; since then, it has engaged in numerous campaigns, mainly involving the protection of forested areas.

Going Further

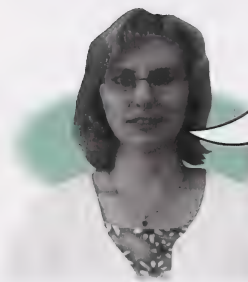
Here's the web address of the Western Canada Wilderness Committee:

<http://www.wildernesscommittee.org/>

From the home page, you can access information about campaigns the organization has been involved in and the successes it's achieved. You can also access the Alberta panel and take a look at what the group is doing right here in your own province.



One thing I notice from all this is that these environmental groups seem to be devoted either to the protection of wilderness areas or to solving problems like global warming, pollution, acid rain, and the hole in the ozone layer.



True. Many groups are devoted principally to wilderness conservation while others focus more on pollution-related problems. Some do both. Of course, any group whose goal is a cleaner and more natural environment can be considered an environmental organization—for example, your community's recycling committee. And when you see those 4-H members out each spring cleaning debris from the sides of highways, they're playing an important role too.



3. Take a few minutes and try to list organizations in your community that engage in activities aimed at making our environment cleaner and healthier. Indicate briefly some of the things each one does. If you're working with a friend, brainstorm for ideas together.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

A listing of a few private environmental organizations can give you an idea of the sorts of groups that exist; but precisely how do they work and what can they accomplish? The next lesson should give you answers to questions like these.

Suggested Answers

1. Answers will vary. There are so many organizations, it wouldn't make much sense to give a list here for you to compare to your own. Several groups are discussed later in this lesson; see how many of them you managed to list. Consider visiting some of the Internet addresses given later in the lesson and then checking the links those sites offer to other websites. You should come up with a good many organizations this way.
2. a. Invasive species are species of plants or animals that aren't native to an area but are introduced from some other part of the world either deliberately or by accident. Because they're new to the environment into which they've been introduced, they have no natural predators; therefore, they frequently multiply at a rate that threatens many species natural to the area. Eventually, an invasive species can destroy an ecosystem that had functioned in a delicate balance for many years.

Zebra mussels are a classic example of an invasive species. Introduced from the Caspian Sea area (probably in ships' ballast water) into the Great Lakes area, probably in the 1980s, these small, striped mussels are now clogging waterways in many parts of Canada and the United States.

- b. The Nature Audit urges the government to co-ordinate a national prevention plan to make sure that dangerous invasive species can't enter the country. Inspection would be a major component of this process.
 - c. The Audit points to the creation of ten new national parks and the fact that some forestry companies have voluntarily adopted conservation policies.
 - d. The Audit cites intensive fishing and oil rigs drilling offshore as causing the collapse of fish stocks, the degradation of waters on both coasts, and the disappearance of some large marine species.
3. Answers will vary. You may find this question easier if you live in a small community because organizations of all sorts tend to be better known in such communities.

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Lesson 2: Environmental Groups at Work



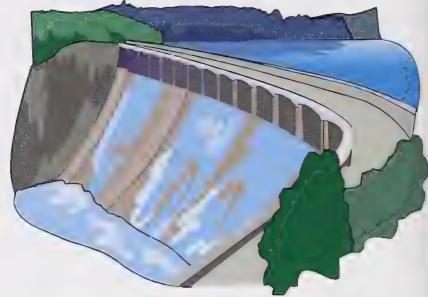
At this point, you should have a reasonable understanding of some basic environmental laws, and you should be aware of the existence of private environmental groups and the sorts of things they do. But just how does it all work? What really goes on when there's a dispute between, for example, a mining or logging company on the one hand and concerned environmentalists on the other?

Perhaps the best way to answer this question is to examine a couple of examples of the process at work. In this lesson you'll be looking at two situations where environmentalists have used legal processes in an attempt to prevent developments they believed would exact too great a cost on Alberta's environment. They are

- the battle over the Oldman River dam
- the Cheviot Mine confrontation

The Oldman River Dam

The Oldman is a river in southern Alberta that flows through Lethbridge and eventually joins the South Saskatchewan River midway between Lethbridge and Medicine Hat. In 1966, the Prairie Farm Rehabilitation Administration conceived the idea of building a dam across the Oldman to create a reservoir for irrigation. This tends to be a dry part of the province, and the idea was that ranching and farming in the area would be greatly improved by damming the river. Environmentalists and local First Nations people objected to the idea, however, saying that the dam would

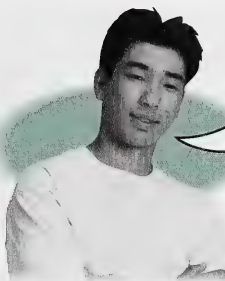


- destroy a cottonwood forest
- cause mercury pollution
- damage or destroy fish habitat
- flood sites held to be sacred by the Peigans

In 1978 and 1979, the provincial government's Environment Council of Alberta held hearings and decided that "a dam on the Oldman River is not required now or in the foreseeable future." In 1983, however, the government announced that it planned to build the dam to provide water for local farms and ranches, and in 1984 decided to proceed without environmental hearings.

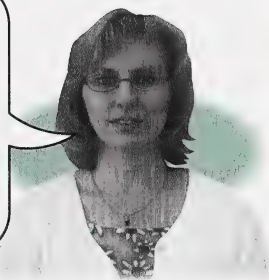
This is where environmentalists got serious. They turned to the federal government and asked it to conduct an environmental-assessment review. When the government refused to get involved, several environmental organizations joined with First Nations groups and called themselves the Friends of the Oldman River. They turned to the courts for help.

The first court decision went in favour of the Friends. Alberta's Court of Queen's Bench ruled that the construction permits the Alberta government had issued for the dam weren't valid, because no public notice had been given or discussions held. The province appealed this decision to the provincial Court of Appeal, but ultimately it issued new construction permits and the dam went ahead.



I don't get it. You mean the dam was being built while all this was going on? How's that possible?

That's right. As you'll see, this went on throughout the legal battles surrounding the dam—all the while the dam was being built. So when the legal fight was over, even though the environmental groups won, the dam was in place. And this isn't the only instance where this has occurred in Canada.



Ultimately, the province dropped its appeal of the Court of Appeal's decision, but construction of the dam continued with its new permits. The next move of the Friends was to launch a new court case saying that the province and those companies building the dam were in violation of the federal *Fisheries Act*.

1. How might the construction of the dam be seen to violate the *Fisheries Act*?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

This case was to be taken to the Federal Court, a court that exists to hear cases involving the federal government; but on the request of the Alberta government, the federal government turned jurisdiction over the case to the province. The charges were then stayed by the provincial Attorney General, and this case never actually got to court.

2. Suggest a reason why in this situation the Friends of the Oldman River would have been anxious for the federal, rather than the provincial, government to assume jurisdiction over this issue.

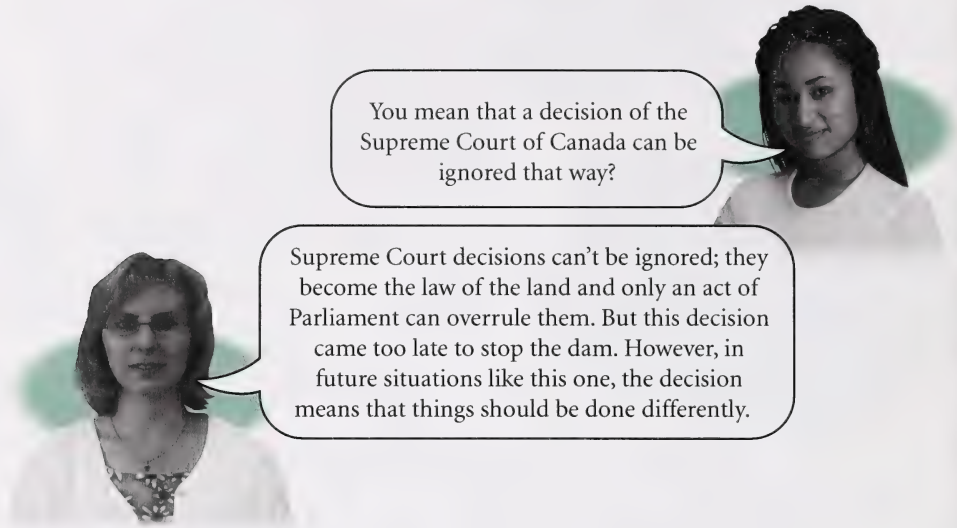
Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Eventually the province did turn the case back to Ottawa, but the federal government didn't take any action; so in 1989, the Friends went back to the Federal Court and filed a motion asking that federal permits be **quashed** and a federal assessment review be launched. In August of 1989, the court ruled against the Friends, but the Friends appealed the decision to the Federal Court of Appeal. In March of 1990, this court ruled in favour of the Friends and ordered the federal government to conduct an assessment review of the dam's likely environmental impact. All the while, of course, the dam was still being built.

stay: to stop something from happening

quash: to declare void

In November 1990, the federal government did, in fact, order an assessment review; but by then, the dam was 90 percent complete. Meanwhile, the Alberta government had appealed the decision of the Federal Court of Appeal to the Supreme Court of Canada—the country’s highest court. In January 1992, the Supreme Court announced its decision, ruling in favour of the Friends of the Oldman River. This decision was delivered the month following the completion of the dam.



So what does all this complicated legal process mean?

One thing it means, of course, is that the dam was built with very little public consultation and is now operational despite the best efforts of the environmental and Native groups trying to halt its construction. However, from a wider perspective, the decision of the Supreme Court of Canada means that from now on it’s clear that the federal government has an important role to play in reviewing proposed projects that might adversely affect the environment; provinces can no longer say that the matter falls wholly within their jurisdiction. Now it has become much harder for governments to avoid public environmental assessments of such projects, no matter how much they’d like them to go ahead quickly.

The Supreme Court judgement is, in fact, one of the strongest environmental rulings in Canada’s history. The judgement noted that “protection of the environment has become one of the major challenges of our time,” and it stated that environmental reviews are essential planning tools for projects with possible environmental impacts.

3. The following news article appeared after the Supreme Court ruling in the Oldman Dam case. The article discusses the impact that an environmental coalition expected the Supreme Court ruling in the Oldman Dam to have on the proposal to build a pulp mill in Peace River. Explain this impact in your own words.

Ruling on Dam Lauded

Pulp mill protestors take strength

The Supreme Court's Oldman Dam ruling will strengthen a court challenge involving a massive Peace River pulp mill, says an environmental coalition.

The coalition of environmentalists and native groups is calling for full public hearings on Daishowa Canada Co. Ltd.'s \$579 million pulp mill near Peace River, 370 km northwest of Edmonton.

"Their decision makes it absolutely clear that the federal government has a position in environmental projects," said coalition member James Darwish.

"The Province can no longer say this is their sole territory," said Darwish, whose group, Edmonton Friends of the North, is part of the coalition.

The coalition's case in Federal Court to force full hearings has been on hold while the Supreme Court of Canada ruled on Ottawa's right to conduct an environmental review of the Oldman River Dam.

The Supreme Court ruled Thursday that the southern Alberta dam shouldn't have been built without a federal review.

Darwish said the federal government should have done an environmental impact assessment before the province gave Daishowa an operating licence in late 1990.

"We consider their mill to be a dirty mill," he said. "We want to see that it's up to par."

A Daishowa spokesman said yesterday that the Supreme Court decision will be studied to see what implications it may have for the company.

"I think it needs to be evaluated and I'm sure we're doing that," said Wayne Crouse.

The coalition includes the Dene Nation of the Northwest Territories, Edmonton Friends of the North, the Metis Association of the N.W.T. and others.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



¹ Jennifer Bain, "Ruling on Dam Lauded," *The Edmonton Sun*, 26 January 1992, <<http://bioc09.uthcsa.edu/natnet/archives/nl/9202/0058.html>> (10 June 1998). Reprinted by permission.

The Cheviot Mine



Mention has been made earlier in this course of the Cheviot Mine controversy stemming from the late 1990s. The issue of developing a coal mine in the area bordering Jasper National Park has been debated—off and on—ever since that time. Put briefly, here's what the controversy has been about.

The mining company Cardinal River Coals made a proposal to develop an open-pit coal mine in an area 23 kilometres long by 3.5 kilometres wide and less than 2 kilometres from the border of Jasper National Park. This at once raised the ire of both environmentalists and First Nations people living in the area. Environmentalists pointed out the threat to the rich and diverse variety of wildlife in this ecologically sensitive part of the province—in particular the threat to fish (some of which are unique to the area), grizzly bears, and Harlequin ducks, which nest in the region. The First Nations protestors, in particular members of the Smallboy Camp, maintained that the mine would have a negative impact on just about every aspect of their traditional life—hunting, fishing, spiritual ceremonies, burials, and the production of traditional medicines.

The proposed mine also drew the attention of the international community. Jasper National Park has been designated a World Heritage Site by the United Nations; and while the proposed mine isn't to be in the park, it will certainly affect wildlife there. As a result, officials of the United Nations' World Heritage Centre wrote to the Canadian government asking it to consider alternative mining sites.

Environmental groups in the U.S. also joined forces with their Canadian counterparts because the proposed mine site runs through land that's part of what's called the "Yellowstone to Yukon Biodiversity Strategy"—a scheme to eliminate human activity in a belt of land stretching from the Yukon to Yellowstone National Park in Wyoming.

Meanwhile, the review process that's necessary for proposals of this sort was going ahead; and in the summer of 1997, a joint federal-provincial panel (made up of members of the Alberta Energy and Utilities Board and the Canadian Environmental Assessment Agency) approved the project. On the basis of this panel's recommendation (and, in the case of the federal government, on the recommendation of the Fisheries minister), both the federal and provincial governments went on to approve the mine's development on the condition that Cardinal River Coals take steps to minimize the mine's impact on the environment. A draft plan for management of grizzly bears was required along with studies to develop corridors for animals migrating through the area; and consultations were arranged with stakeholders, such as the First Nations people in the region. Cardinal River Coals announced its intention to operate the mine for about 20 years and then return the land as much as possible to its original condition.



4. The hearings held by the joint panel called for public input, but not many people from the communities close to the proposed mine (such as Hinton and Edson) expressed environmental concerns. Suggest a reason why people in the surrounding area might not support attempts to prevent the development of the mine.
5. At this point, with federal and provincial approval given to the mine, what other legal avenues might still be open to environmentalists and others wishing to prevent the development of the mine?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

If in your answer to question 5 you suggested that those opposed to the Cheviot Mine might be able to take the government to court, you were right. The newspaper article that follows describes what happened. Read the article; then answer the questions that follow it.

Cheviot Mine Would Break Feds' Own Laws, Court Told

The federal government would be breaking its own laws by allowing a coal mine near Jasper National Park in Alberta, Federal Court was told Wednesday. Five environmental groups are suing the federal minister of fisheries and oceans in an effort to stop the Cheviot mine.

The mine was approved by a joint federal-provincial panel last year, but mine operator Cardinal River Coals Ltd. needs a permit from the ministry before construction can begin.

"It's not that we're opposed to mines in principle, but this is not the place," said Dianne Pachal, conservation manager for the Alberta Wilderness Association. "I don't know if you could pick a worse place."

The association—backed by the Canadian Nature Federation, the Canadian Parks and Wilderness Society, the Jasper Environmental Association, the Pembina Institute for Appropriate Development, the Smallboy native band and the Treaty Eight First Nations—launched the lawsuit.

They said the environmental assessment by the panel was insufficient and the mine contravenes the federal Migratory Bird Convention Act and the Canadian Environmental Assessment Act.

In particular, they said the mine will permanently destroy nesting areas of Harlequin ducks.

Coupled with existing mines and logging in the area, it will also have a devastating effect on grizzly bears, they claim.

The mine will affect just about every aspect of traditional life for the nearby Smallboy Camp Indian band, the court heard.

"They have a profound ancestral and spiritual connection to that area," said lawyer Julie Lloyd.

The native band uses one of the areas destined to be covered with the mine's waste rock for burials, spiritual ceremonies, hunting and fishing, Lloyd said, and they also use plants found only in that area for traditional medicines.

The \$250-million mine will come within 2.8 km of Jasper National Park in the Rocky Mountains. It is expected to stretch 23 km and be 2.5 km wide.

Company spokesperson Allen Maydonik said construction can begin "as soon as this hurdle is over."

Jasper Park has been designated a world heritage site by the United Nations. World Heritage Centre officials have written to the Canadian government asking them to consider alternatives.

"Now you have the world heritage association saying, 'Hey, Canada,'" said Pachal.

She said she hopes public hearings will be reopened to take a better look at the impact the mine will have on the ecologically sensitive area. Environmental groups believe another assessment will result in a recommendation against the mine.

The Sierra Club and the Pembina Institute are currently contacting Cardinal River Coal's international customers to discourage them from buying Cheviot coal.

The company's current mine is expected to run out in the next five to seven years.

6. Identify the plaintiff and the defendant in this case. Be precise; where more than one group was involved, list all of them.
7. Briefly explain the legal grounds on which the plaintiff based its case.
8. **a.** In which court was this case heard?
b. Why would this court have been selected for this case?
9. According to the article, what step other than launching a legal action did some environmental groups take in their battle against the mine?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

¹ Dene Moore, "Cheviot Mine Would Break Feds' Own Laws, Court Told," *The Edmonton Journal*, 30 April 1998, A3. Reprinted by permission of The Canadian Press.



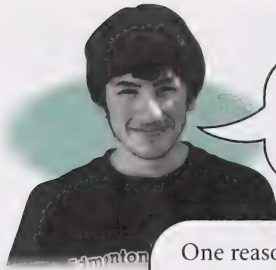
In June of 1998, the Federal Court decided this case; and the judgement went against the plaintiffs. The court ruled that the report of the review panel was only one step in the approval process and that the case really should have been directed against the final approval of the federal cabinet. The decision didn't surprise the environmentalists, who vowed to continue the fight using other means. In particular, one spokesperson for the coalition of environmentalists said his group would

- lobby the federal Department of Fisheries and Oceans and the Alberta Environmental Protection Department to place severe restrictions on the mine's operating permits
- pressure consumers not to buy coal from the mine
- review the Federal Court's ruling and consider appealing the decision to the next Federal Court of Appeal

These, along with organizing peaceful demonstrations, are all perfectly legal methods of carrying on the battle; however, at least one Edmonton environmentalist suggested that road blockades might be needed to stop the project. Setting up illegal blockades is something you've likely seen environmentalists do on TV news coverage; it's the sort of thing that people notice, and thus it raises public awareness of the issue being protested.

However, the battle continued in the courts as well as in the public eye. The coalition of environmental groups fighting the mine decided to appeal the court's decision to the Federal Court of Appeal, and in April 1999, this court overturned the approval given the mine earlier. The next year, development of the mine was postponed indefinitely, and environmentalists and their First Nations allies hoped that the mine was dead. For several years it seemed that they were right.

However, when there's money to be made, environmentalists have learned that the battles are likely to continue. The Federal Court decision meant that the mine proposal had to go back to the review panel and look at all the environmental information not considered originally. For a while, people thought that this wouldn't happen—that the mining company would concede the fight and walk away. However, in 2003 the Alberta government issued new permits under the *Environmental Protection and Enhancement Act* with beefed-up environmental requirements, and in 2004, even though no required federal authorizations were in place, the mine plan was revived due to improved export sales of coal to the international steel industry.



But how can they go ahead with the plans without any of the required federal authorizations?

One reason is that the new mine will be different from the way it was originally designed. It will mine less than half the coal and employ far fewer people—so on the surface it appears less environmentally dangerous. However, environmental groups maintain that the new design will be even more destructive because it will require more land.



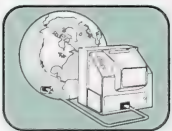
As yet, the Cheviot Mine situation remains undecided, and the very complex legal twists and turns the project has taken go far beyond the scope of this course. The little bit you've read, however, should help you understand just how complicated environmental decision-making can be. Governments are caught between pressures to protect the environment on the one hand and to allow businesses to create jobs and generate wealth and prosperity on the other.

Going Further

If you'd like to learn more about the Cheviot Mine situation, the Internet will give you a wealth of information on it. The search term *Cheviot Mine*, entered into any good search engine, should supply you with a great deal of information, but you might begin with the following address, operated by the Sierra Club of Canada:

<http://www.cpaws-edmonton.org/cheviot>

Once there, the gold-coloured buttons on the left will tell you just about everything you'd like to know. Look, in particular, at the Current Status, Updates, and Timelines of Events buttons.



Because of the difficulties environmentalists have encountered in fighting projects like the Cheviot Mines, supporters frequently engage in activities like boycotting products, lobbying the government, and marching in peaceful demonstrations. These are all legal means of raising public awareness and applying pressure on developers and governments. Sometimes, however, frustrated protesters engage in illegal protests like road blockades.



The question of whether or not environmentalists should use illegal methods like this in their fight against development and the threats it can create is one that divides people. Some feel that civil disobedience is a legitimate last resort in fighting for a worthy cause if legal methods fail. Others feel that breaking the law is never right; they point out that legal processes are in place, and this is where the battle must be fought.



10. Read the discussion on civil disobedience that follows. Then, in a paragraph or two, express your own views on the place of civil disobedience in environmentalism. Be sure to explain your reasons. If you're working with a friend, take sides and debate the issue.



Civil Disobedience: Is It a Necessary Component of Justice?

Civil disobedience is the refusal to obey civil laws in an effort to change legislation. This disobedience is usually nonviolent and may take the form of protests and demonstrations, roadblocks and sit-ins. Participants in these activities are willing to accept the penalties, such as fines or imprisonment, for breaking the law. They believe that by attracting public attention and creating an awareness of their cause the government will be forced to take positive action to correct a situation that they feel is wrong.

The objective of recent acts of civil disobedience in Canada has been to protect the environment and natural resources. In the summer of 1993, demonstrators violated a court order by blocking a logging bridge to prevent loggers from entering Clayoquot Sound on Vancouver

Island in British Columbia. This area contains one of the last temperate rain forests in Canada, and the protestors used civil disobedience to try to protect the trees, wildlife, fish, and rights of the people living in this area.

In the same year, on the East coast of Canada, 100 fishing boats illegally held a Russian fishing boat at bay off the coast of Nova Scotia, blocking its attempt to unload 12 000 tonnes of cod at a fishing plant. The six-day blockade was to protest foreign fleets, which had been overfishing the cod and threatening the livelihood of fishers in Nova Scotia.

On One Side

Those who support civil disobedience argue that it is a necessary component of justice. While

the democratic process of drafting, passing, and implementing legislation is an important one in our society, it is also a lengthy one. If citizens wait for legislation to evolve through due process, resources like the cod and areas like Clayoquot Sound will be long gone before there are laws in place to protect them. Acts of civil disobedience, they argue, are also important in our society in that they create public awareness of situations that require immediate attention.

On the Other Side

Opponents of civil disobedience feel these actions threaten the freedoms of all Canadians and should not be tolerated. They want the government and the courts to take stronger

action against those who deliberately break the law and impose hardship on other law-abiding citizens. They point out that Canada is a democracy where the majority rules. If special interest groups feel their needs and objectives are being ignored, they have the right to convince others of the legitimacy of the viewpoint through legal means.

The Bottom Line

The debate over the value and necessity of acts of civil disobedience is ongoing. Can civil disobedience be justified as a necessary component of justice? Or is the democratic process the only valid process for changing legislation? Where do you stand on this issue? You be the judge!

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

This lesson has tried to give you an idea of how environmental battles arise and how they're fought in and out of the courts. Of course, these days the principal tactic of those concerned with the impact of projects on the environment is to become involved in public reviews. But precisely what goes on in reviews of this sort? This is what you'll be looking into in the next lesson.

Suggested Answers

1. The Friends of the Oldman River feared that the existence of the dam and the necessary diversion of the river would destroy fish habitat and so be harmful to fish living in the river. Anything that does this can be considered a violation of the *Fisheries Act*.
2. In a situation like this one, the provincial government could easily be, or could be perceived to be, in a conflict of interest. On the one hand, farmers and ranchers in the area wanted the dam; while on the other hand, Native groups and environmentalists were opposed. The provincial government would naturally also want to promote the economic growth promised by the dam, and this might cause it to view the concerns of those opposed in an unfavourable light. The federal government, by contrast, in being farther removed, might more easily be able to take an unbiased position. This is not to suggest that the federal government is more likely to be fairer in making decisions—only that its arm's-length position might, in this instance, give it an advantage.

¹ From *All About Law 4/E*, Student Text by GIBSON/GRANT/JARMAN/MURPHY. © 1996. Reprinted with permission of Nelson, a division of Thomson Learning: www.thomsonrights.com. Fax 800-730-2215

3. The environmental coalition cited in the article expected the ruling to mean that the federal government would have to conduct full public hearings on the proposed Daishowa pulp mill. The spokesperson said that the ruling meant that the federal government should have carried out an environmental-impact assessment before issuing Daishowa an operating licence. All this should mean, the coalition felt, that their court challenge calling for public hearings would be strengthened.
4. Many people in the surrounding area were probably anxious for the jobs and accompanying economic prosperity promised by the mine.
5. One avenue possibly open to those opposed to the mine is legal action. If there are grounds for making the case that proper assessment procedures weren't followed or if any other legal grounds seem possible, a court action can be launched that could, at the very least, delay the opening of the mine and possibly stop it completely. Other avenues might include boycotts, demonstrations, national and international public-information campaigns, government lobbying, and perhaps civil disobedience. (If you aren't sure what civil disobedience is, you'll be looking at it shortly.)

Did you think of any other possible tactics?

6. The plaintiff is a collection of organizations:
 - the Alberta Wilderness Association
 - the Canadian Nature Federation
 - the Canadian Parks and Wilderness Society
 - the Jasper Environmental Association
 - the Pembina Institute for Appropriate Development
 - the Smallboy Band
 - the Treaty Eight First Nations

The defendant is the federal Minister of Fisheries and Oceans.

7. Though the mine was approved by a joint panel, the mining company still needs a permit from the Ministry of Fisheries and Oceans before construction can start. The plaintiffs hope to prevent this by proving that the environmental assessment carried out by the panel was insufficient and that the mine is in contravention of the federal *Migratory Bird Convention Act* and the *Canadian Environmental Assessment Act*. In showing that the assessment was inadequate, the plaintiffs point in particular to the damage likely to be done to Harlequin ducks and grizzly bears and to the destruction of the traditional life of the First Nations people in the area. (Though the article doesn't point this out, the thrust of the plaintiff's case was that the review panel focused too much on this individual mine and failed to take into account the cumulative effects of mining in the area.)
8.
 - a. The case was tried in the Federal Court of Canada.
 - b. The defendant is a ministry in the Government of Canada, and the Federal Court is where such cases are heard.
9. According to the article, the Sierra Club and the Pembina Institute were contacting Cardinal River Coal's international customers and asking them not to buy Cheviot coal. In other words, they organized a boycott.

10. Answers will vary. Certainly the argument that the legal processes sometimes work so slowly that the damage is done by the time they're resolved has some real truth to it. On the other hand, if people disobey the law whenever they disagree with it, social order will soon break down.

Whichever position you took, were you able to defend it with clearly presented arguments?

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Lesson 3: An Environmental Review



You've heard a good deal in this course about the formal reviews used nowadays to assess the effects a project is likely to have on the environment. Governments use reviews of this sort to assess the impact on the natural environment, on people living in the area, and on the traditional way of life of Aboriginal peoples. They try to weigh these consequences against the economic benefits of the project in an attempt to decide whether or not it should be allowed to go ahead and, if so, with what restrictions.

But just how are formal reviews conducted? Of course, the process varies depending on the nature of the project and on what authority is carrying it out; but for the most part, reviews follow the same sort of pattern. In this lesson you'll be given a general overview of how the process works. It's possible someday you'll find yourself involved in an environmental review, either supporting or objecting to a project proposed in the area where you're living. If so, this material may be of some practical use. If not, it's still important that you understand how this process works to safeguard public input into activities that can so profoundly affect people's quality of life.

The processes outlined in what follows are very simplified from what you'd actually encounter in a real situation, but they should give you an idea of how things work in a general sense.



Imagine that a company wants to undertake a project that's bound to have environmental consequences. As an example, let's say that the plan is to develop a mine. A project of this sort would be subject to a review by Alberta's Natural Resources Conservation Board (the NRCB) to see whether, all things considered, it's in the public interest that the mine go ahead.

The Application

The company wanting to develop the mine is required by law to submit an application to the NRCB for review (the company then becomes known as the *applicant*). The application must contain the following components:

- a description of the project including things like
 - location
 - design
 - natural resource inputs
 - waste by-products
 - alternatives to the project
- an evaluation of the project's likely impact and plans to monitor them and minimize their effects

Impacts of the following sorts should be covered:

- environmental
 - social
 - economic
- a description of what's been done to involve those likely to be affected by the project in an attempt to take their concerns into account in planning the development
 - a summary of why the applicant thinks the project would be in the public interest

If a formal environmental impact assessment was carried out for the project, it must also be submitted.

When the NRCB receives an application, it conducts an initial review to make sure everything's in order; it may require more information from the applicant.

The Notice of Application

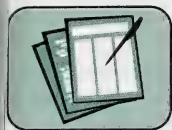


When an application is all in order, the NRCB publishes a *notice of application*, which notifies the public that an application for the project has been received. This notice of application asks people likely to be directly affected by the project, and others with an established interest in it (the board decides who can be considered to fall into these categories), to submit in writing any objections they might have. If no submissions are received, the project may well go ahead without a formal hearing.

Letters of Objection

If even one letter of objection is submitted from someone with a genuine interest in the project and/or its impact, a hearing must be held. The only exception is if the objection clearly seems to be trivial or of little merit. For this reason, it's important that any written submission be well constructed. Such a letter should explain

- where the writer lives in relation to the project
- what concerns the writer has
- what the project's likely impact will be in the writer's view



1. You live next to a river downstream from the proposed mine. In the winter, you make your living by working a trapline; and in the summer, you conduct “eco-tours” in the area, guiding environmentally sensitive hikers through the untouched natural beauties of the local surroundings. You’ve decided to write a submission to the NRCB outlining your objections to the proposed mine. Use your imagination and write your letter clearly, forcefully (but not in an angry or emotional tone), and logically. The letter needn’t be long, but it should set out your reasons for objecting to the mine.



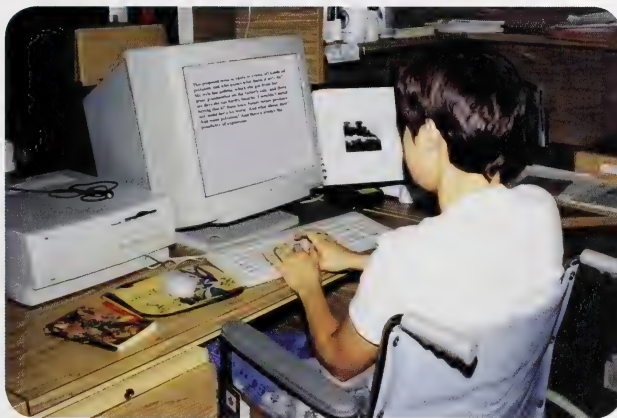
Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

The Notice of Hearing

If serious submissions are received objecting to the project, a hearing must be held. It’s announced 30 days in advance by a *notice of hearing* indicating things like

- the topic
- the place, date, and time of the hearing
- information on how to obtain copies of the application and other information

Intervener Submissions



Once the notice of hearing has been given, anyone with a genuine interest in the project can file what are called *intervener submissions* with the NRCB. People filing these submissions are called *interveners* (because they’re intervening in the process), and their submissions must tell

- what they think the board ought to do about the application
- why they think this
- what information they intend to present as evidence

These written intervener submissions are very important. Usually at the hearing only a brief oral summary of them will be given, but the board will study the written documents in detail. For this reason, it's important to take the time to make a clear, full case in the submission. Submissions often include ideas for alternatives to the proposed project, suggestions to minimize any environmental impact, and restrictions that should be imposed on any licences given the applicant. The NRCB gives the following suggestions to people writing intervener submissions:

- Clearly state how you think the board should treat the application and why.
- Focus on a few key issues.
- Concentrate on essential information; avoid material that may be interesting but isn't directly relevant.
- Support all factual statements as fully as possible; avoid arguments based on unproven assumptions.
- Be sure to include your arguments and evidence; you shouldn't try to present new material later on at the hearing.

2. Here's a passage from a poorly written submission. Explain the flaws it contains.

This proposed mine is likely to create all kinds of pollution, and who knows what harm it will do? My wife has asthma, which she got from her great-grandmother on the father's side, and there are days she can hardly breathe. I wouldn't mind betting that all those toxic fumes mines produce will make her a lot worse. And what about dust? And water pollution? And there's always the possibility of explosions. Besides, I'll bet there are Native artifacts and such up there that digging a mine will destroy. And I've heard a dozen or more people say that half the wildlife in the area will disappear; a guy on TV said there are animals around here unique to this region and they'll probably become extinct if the mine is built.

Well, that's about all I can think of for now, but I'll have a lot more to say at the hearing.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

The Hearing




Frequently, the NRCB will hold several pre-hearing meetings so those involved can talk, exchange documents, and familiarize themselves with procedures and processes. All this time, as well, the board expects the applicant to be busy consulting with those affected by the proposal in an attempt to work things out without a formal hearing. If a formal hearing is required, however, it's the next major step in the review process.

At the hearing, an open, public forum is provided for all those concerned to present their cases. Evidence of an environmental, social, economic, and technical nature can be presented; and those involved in the process have the chance to cross-examine each other.


All participants are expected to present their cases clearly and as completely as possible given the time constraints of a public meeting. Anyone who becomes long-winded, however, and starts wasting the time of the other parties involved will be advised to stick to information that's pertinent and necessary.

Hearings are normally held in a public hall or meeting room near the spot where the project is to be undertaken. This makes it easier for those affected to take part.






All this sounds fine; but on a practical level, I can see financial problems for some participants. I mean, you may have to travel to get to the hearing, and it can cost money to gather all that technical information. And I bet sometimes you have to hire lawyers and other specialists.



Yeah, which means that the process really favours the big company that wants to dig the mine or whatever. It can afford all those expenses, but the little guy whose livelihood is threatened may not be able to.



Good points. And for that reason, there are methods in place to help interveners with their funding. Travel expenses are normally covered, and costs for things like getting **expert witnesses** are usually paid as well. An effort is made to create a level playing field.

expert witness: a witness called to give evidence in an area of technical expertise—such as a doctor, an engineer, or a scientist

Just what goes on at a hearing? The procedures aren't as formal as those of a courtroom, but they do follow a set pattern.

- First, there are preliminary remarks—a statement of the hearing's purpose, an introduction of the panel members, and so on.
- Next, each participant, starting with the applicant, presents his or her position and evidence. Both the NRCB panel and other participants can cross-examine them.
- When all the interveners who want to present evidence have done so, the applicant can present rebuttal evidence.
- Next, all the parties present their final arguments to the board; basically this is just a summary of their positions and arguments. This time around, the interveners go first and the applicant finishes up.
- Finally, the chair closes the hearing and usually announces that the panel will defer its decision until it releases its report at a later date.

As noted earlier, presentations at the hearing are intended only to highlight the written submissions sent to the board earlier; the panel doesn't want lengthy, long-winded speeches at this point. The board makes these recommendations:

- Oral presentations aren't mandatory for interveners, but they may be given if desired. Sometimes, interveners will limit themselves to cross-examining the applicant.

- Oral presentations should be brief (no more than 20 minutes) and to the point.
- Oral presentations should focus on a few key points.

The following chart has been taken from a document produced by the NRCB. It summarizes their hearing procedure.

NRCB Hearing Procedure	
Opening Remarks	<ul style="list-style-type: none"> • Purpose of the hearing is stated. • Panel and staff are introduced. • Participants are registered. • Note order of registration—applicant is registered first.
Preliminary Matters	Any procedural, legal, or similar matters are considered.
Submissions Participants in Registration Order (Applicant First)	<p>For each submission, the following occurs:</p> <ul style="list-style-type: none"> • Documents are registered as exhibits. • Witnesses are introduced and credentials presented. • The submission is highlighted by the witnesses. • Witnesses are examined (questioned to clarify their submissions or statements): <ul style="list-style-type: none"> – by other participants, in order of registration – by NRCB staff – by the panel • Examination is redirected (that is, additional clarifying information may be presented by the witness).
Rebuttal Applicant Only	<ul style="list-style-type: none"> • Applicant may submit rebuttal evidence to address points raised during the submissions of other participants. Examination by other participants is permitted, but only on the additional evidence presented. • Interveners are not allowed rebuttal, as their submissions are made after the applicant's and they have the opportunity at that time to rebut the applicant's submission.
Final Argument Interveners in Registration Order (Applicant Last)	<ul style="list-style-type: none"> • Participants may state what they believe are the most important aspects of the matters to be considered and the reasons for the conclusions they believe the panel should come to. • Following the interveners' final argument, the applicant has an opportunity to rebut the interveners' argument.
Closing	<ul style="list-style-type: none"> • Panel chairperson will usually announce deferral of the panel's decision.
Report	<ul style="list-style-type: none"> • Later, a report stating the decision and the reasons for it is distributed to all registered participants and made available to the public.

The Report



After a public hearing, the NRCB studies all the evidence and eventually publishes its decision in a report written by the panel members. The report provides background information, presents the arguments from both sides, and gives reasons for the final decision. If an application for a project is approved, often there are conditions imposed on the applicant company limiting just what it can do. The hope is that these limitations will minimize damage to the environment or another area of concern. Of course, the applicant will likely still have to get the normal licences and so on, so NRCB approval is only one step in the process of getting a go-ahead on the project.

Appeals

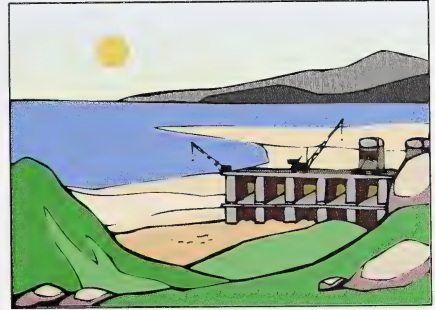
What happens if an applicant or an intervener is unhappy with the board's decision? Sometimes an appeal may be brought to the courts, but the appellant would have to show that the board had gone beyond its authority. Otherwise, everyone simply has to live with the board's decision or use other methods, such as lobbying the government or organizing boycotts, to discourage the project's development.

3. Here are ten of the steps in the process of conducting a public review of a proposed project. They're given in a random order; your job is to arrange them in their correct sequence from one to ten.
 - Interested parties write letters expressing their objections to the proposal.
 - The applicant rebuts the oral submissions of other participants.
 - A notice of hearing is made public.
 - Opening remarks are made at the hearing.

- The panel's decision is announced.
- The applicant files an application to undertake a project with the NRCB.
- Intervener submissions are filed with the NRCB.
- Oral presentations are made, beginning with the applicant.
- The notice of application is made public.
- Final arguments are made at the hearing.

- 4.** In this lesson you've looked at the main steps involved in a typical environmental review. The process you examined is that used by Alberta's Natural Resources Conservation Board; but it could just as easily be that of other boards, such as the Energy Resources Conservation Board.

Test your knowledge of the review process by deciding whether each of the following statements is true or false. Correct any that you indicate are false.



- Companies planning a project with possible environmental consequences are expected to submit an application for a review.
- Applications should evaluate the project's likely impact in ways other than purely environmental.
- A formal environmental impact assessment must be submitted with each application.
- A formal hearing will always be conducted even if no one submits an objection to an application.
- Even one written objection will always trigger a hearing.
- Submissions made by interveners should be complete because at the hearing usually only a summary of the submission will be permitted.
- Intervener submissions should include only information directly relevant to the application.
- Applicants are expected to work with those likely to be affected by the project in an attempt to work things out without a formal hearing.
- Interveners are always entirely on their own as regards the financial costs involved in participating in a review.
- There's no opportunity for cross-examinations at the hearing itself.
- At a hearing, only the applicant is given a special time for a rebuttal.
- All those who have submitted a written intervention are required to make an oral presentation at the hearing.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

In this lesson you've had a look at the general process a typical environmental review follows. The procedures of the Natural Resources Conservation Board were used for the purposes of example, but these procedures are typical of those used by other boards.

At this point in the course you should have a pretty good idea of the major features of environmental law in Canada. In the next lesson, you'll be putting this knowledge to work to do some research into an environmental issue that interests you.

Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer question 1.

Suggested Answers

1. You'll have to assess your own letter. Here are some questions to ask yourself:

- Have I explained where I live in relation to the project?
- Have I expressed my concerns about the project?
- Have I explained the project's likely impact on myself and my family, my life, my property, and/or my livelihood?
- Are my ideas expressed clearly and logically?
- Do I stick to the point and avoid irrelevant material however interesting it might be?
- Do I avoid an angry or emotional tone?
- Are my grammar, spelling, and punctuation correct?

2. This passage contains many flaws:

- It refers to vague possibilities (for example, "likely to create," "who knows what," "all those toxic fumes mines produce").
- It refers to unsubstantiated facts (for example, "And I've heard a dozen or more people say," "a guy on TV said").
- It contains irrelevant information (for example, "which she got from her great-grandmother on the father's side").
- It indicates that the writer intends to present more material at the hearing rather than simply highlight his written submission ("but I'll have a lot more to say at the hearing").

Did you spot any other flaws?

3. The correct order is as follows:

- The applicant files an application to undertake a project with the NRCB.
- The notice of application is made public.
- Interested parties write letters expressing their objections to the proposal.
- A notice of hearing is made public.
- Intervener submissions are filed with the NRCB.
- Opening remarks are made at the hearing.
- Oral presentations are made, beginning with the applicant.
- The applicant rebuts the oral submissions of other participants.
- Final arguments are made at the hearing.
- The panel's decision is announced.

4. a. T

b. T

c. F (Only some projects require an EIA.)

d. F (If no one objects, a formal hearing may be dispensed with.)

e. F (Objections felt to be silly or trivial won't trigger a hearing.)

f. T

g. T

h. T

i. F (In some situations, provisions are made to cover the costs involved for interveners.)

j. F (There is ample opportunity for cross-examination of all parties.)

k. T

l. F (In some situations, the written submission is enough; in all situations, the oral presentation takes second place in importance to the written submission.)

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Lesson 4: Challenging Issues in Environmental Law

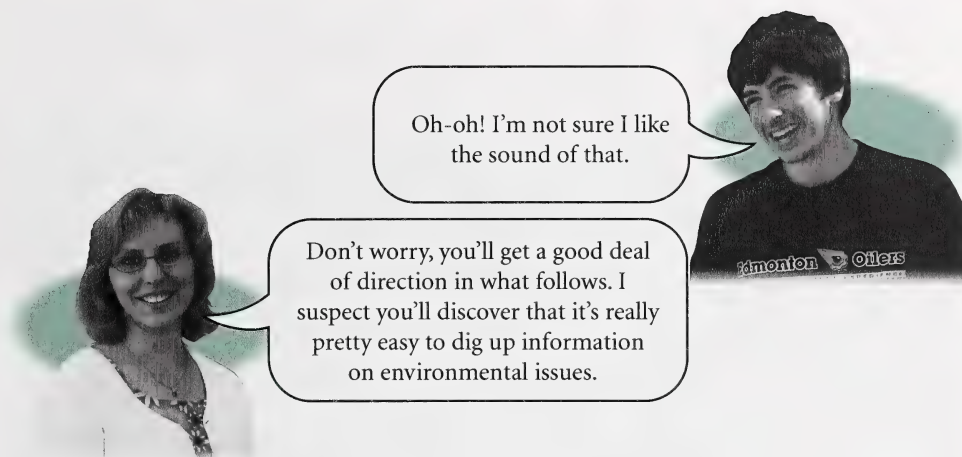


One thing that's probably struck you as you've worked through this course is how important the area of environmental law is to our society today. If you keep an eye on current events being covered in the media, this shouldn't have come as a surprise to you; environmental issues are front and centre these days. In fact, many people think that the most pressing issues the world will face over the next few decades will be ones that concern the environment.

The law is by its very nature a rather conservative institution; it doesn't change quickly. This is a good thing in most respects; a law that shifted with each passing fad in thinking, or that was so changeable it was hard to know from one day to the next, wouldn't be of much use. However, when we have pressing problems like the destruction of rainforests, the extinction of plant and animal species, global warming, and ozone depletion, it's important to act quickly. The question is, can the law act quickly enough?

The Assignment

Pressing environmental issues are challenging lawmakers in Canada and all over the globe. In this lesson you're going to be picking **one** challenging issue and investigating it. Then you'll be writing up your findings in a short report. This report will be one of the Section 3 assignments asked for in Assignment Booklet B.



To get started on this project, you'll have to select an issue that interests you and begin digging into it. Your librarian and Legal Studies teacher should be able to give you some direction here. If you have access to back issues of newspapers and newsmagazines like *Maclean's* they'd likely be a good place to begin your research. Other sources of information are reference books, pamphlets, and TV and radio documentaries.

But chances are you'll find the Internet to be your most useful research tool. You can simply use a search engine for a search of key words (like *Cheviot Mine*), or access the archives of newspapers for information. And of course all the major environmental groups maintain websites, and they're often full of information about current issues. They'll usually also give you links to other relevant sites as well.

Here are the addresses of a few websites that will get you started. Several of them have appeared earlier in this course. Note that they aren't listed in any particular order.



- Canada's Forest Network: <http://www.forest.ca/>
- The World Wildlife Fund Canada: <http://www.wwf.ca>
- The Sierra Club of Canada: <http://www.sierraclub.ca/>
- Parks Canada: http://parkscanada.pch.gc.ca/index_e.asp
- Greenpeace Canada: <http://www.greenpeace.ca/e/index.php>
- Alberta Environment: <http://www3.gov.ab.ca/env/index.html>
- The Alberta Wilderness Association: <http://www.albertawilderness.ca/>
- The Environmental Law Centre: <http://www.elc.ab.ca/home/index.cfm>
- The Green Lane (Environment Canada): <http://www.ec.gc.ca/envhome.html>
- The Canadian Wildlife Federation:
http://www.cwf-fcf.org/pages/home/default_e.asp?language=e

- The Canadian Parks and Wilderness Society:
<http://www.cpaws.org/index.html>
- The Western Canada Wilderness Committee:
<http://www.wildernesscommittee.org/>
- The Canadian Wildlife Service (Environment Canada):
http://www.cws-scf.ec.gc.ca/index_e.cfm

Many of these websites will provide contact information—e-mail and postal addresses. And if you do contact them, most will be willing to send you any information they may have on a specific issue. Be careful, however; remember that these groups always have a point of view and they want to convince you of its truth. Try to get information on both sides of any issue before writing your report.

When you've done your research and you're ready to write up your report, be sure to read the instructions for that assignment in your Assignment Booklet. Your report doesn't have to be long, but it should show that you've done both some research and some thinking about the problem you've selected.

The Issues

The list of issues from which you're to select is very long, so you shouldn't have trouble coming up with one to find information on. To make things easier, you can select from a variety of types of issues. For instance, you might research something very specific, like a current battle over a specific project, or you could select a recent such battle that's essentially over—as long as you use it to bring out the legal issues at stake.

On the other hand, you could choose something more general, such as the fight to reduce greenhouse gases in the atmosphere. If you find your issue is very broad and you have too much material, you can focus on some aspect of the problem—such as Canada's promise at Kyoto to reduce greenhouse-gas emissions and the problems it's generated with petroleum-producing provinces like Alberta. In fact, you could narrow the focus considerably more than this if you find you're getting too much information.



The issue you select can be one that's essentially international, national, regional, or even local. It can have global significance—like the thinning of the ozone layer—or it can be limited in scope to your own municipality—such as the problem of finding a landfill site that won't pollute nearby areas or the water table.

What follows is a list of possible topics. It isn't arranged in any particular order, and you'll find a lot of overlap. Some are general topics; others are specific. You aren't limited to the list; it's just provided to give you ideas and get you started.

Possible Topics

- endangered species—plants, insects, fish, other animals
- nuclear plants and radioactive wastes
- hazardous-waste storage, transportation, and disposal
- toxic-waste management
- finding landfill sites
- oil spills (into oceans, rivers, lakes)
- acid rain
- greenhouse gases and global warming
- ozone depletion
- water pollution
- air pollution
- national parks
- endangered spaces
- pesticides and herbicides
- destruction of rainforests
- whaling
- Canada's east- and west-coast fish stocks
- clear-cut logging
- destruction of wetlands
- selected environmental cases and campaigns in Alberta, for instance
 - the Cheviot Mine
 - the Oldman River dam
 - the Kananaskis Highway
 - the Daishowa pulp mill in Peace River
 - the Swan Hills waste-disposal plant
 - protecting the “Whaleback” in southern Alberta



- selected environmental cases elsewhere in Canada, for instance
 - logging in Clayoquot Sound (British Columbia)
 - the Rafferty-Alameda dam (Saskatchewan)
 - the hydro-electric project near James Bay (Quebec)
- Canada's global commitments, such as those made at Rio and Kyoto

How you structure your report will depend in part on the sort of topic you've selected to research. For instance, a report on a general topic such as greenhouses gases will differ from an investigation into a case study such as logging in Clayoquot Sound. As much as possible, however, try to do the following in your report:

- Identify the issue or topic you've selected.
- Gather information on the subject.
- Investigate the laws relating to the topic.
- Explain the issues, problems, and challenges involved.
- If appropriate to the topic, compare the laws of Canada with those of other countries. (This is a purely optional component; don't worry about it if it doesn't seem relevant to your topic.)
- Suggest possible solutions to the problem or issue, including proposals for changes to the existing legislation.

To help you out, here's some of the information gathered by one student. It isn't yet written up as a complete report, but it should give you a bit of direction. The topic of this project was acid rain.

- A simple explanation of acid rain is that it's pollution produced by coal-burning power plants, smelters, and motor vehicles. It is composed of oxides of sulphur and nitrogen that change chemically as they travel through the atmosphere and fall to the earth with rain, snow, mist, and dust. Each time acid rain falls into a lake, that lake becomes slightly more acidic. Such lakes eventually become so acidic that fish and plant life die.
- One characteristic of acid rain is that it dissolves metals. An unfortunate effect of this is that metals needed by growing vegetation are washed away; another is that these same metals can end up in our drinking water. The ability of acid rain to dissolve substances is a danger to buildings; for example, the Parliament Buildings in Ottawa have eroded due to acid rain.



- Canada generates about three million tonnes of acid-rain emissions into the skies annually. Though precise data aren't available, some estimates of the number of lakes killed by acid rain in Canada are as high as 14 000. Even if the acid rain is stopped today, it would take many years before these lakes returned to their normal state.
- Federal legislation relating to acid rain includes the following:
 - the *Leaded Gasoline Regulations*, which limit the amount of lead in gasoline
 - the *Motor Vehicle Safety Act*, which establishes standards of emissions from gasoline- and diesel-powered motor vehicles
 - the *Canadian Environmental Protection Act, 1999*, which regulates emissions that cause acid rain
- Legislation from outside Canada includes the following:
 - In the United States, the *Clean Air Act* attempts to control international air pollution. This law states that once American air pollution endangers the welfare of a foreign country, the state producing the pollution will be required to change its laws to control emissions.
 - In Europe, the *Economic Commission for Europe Convention, 1979*, was the first international agreement on air pollution. It involved many nations, among which were Great Britain, West Germany, Norway, and Sweden.
- Alternatives that can help alleviate the acid-rain problem include these:
 - Pass laws encouraging the development and use of more vehicles using alternative fuels such as methanol, ethanol, electricity, and natural gas.
 - Legislate an increased use of oxygenated fuels.
 - Pass laws making it mandatory to use gas-vapour recovery systems on the nozzles of service-station pumps.
 - Make stiffer laws regarding motor-vehicle, nitrogen-oxide emissions for cars, light trucks, and heavy trucks.
- Here are some proposed general solutions for the acid-rain problem:
 - Strongly enforce the legislation, both federal and provincial, now in effect.
 - Increase the penalties for breaking acid-rain laws.
 - Have Canada and the U.S. come to an agreement to work together to solve the acid-rain problem.
 - Set higher pollution standards for both countries.
 - Encourage provinces to adopt programs like Ontario's Countdown Acid Rain of the 1990s, a practical program of that province's Ministry of the Environment designed to limit the emissions that contribute to acid rain.

At this point, you can get started on your research. It's probably a good idea to keep your topic quite limited in scope; for instance, it would be easier to write a good report on the problems with keeping the country's Kyoto commitments on greenhouse gases than on the issue of global warming in general—and even better to focus in on some specific issues related to the Kyoto Protocol. Remember, the preceding list is meant to be simply a starting point for ideas. If, for example, you're aware of any local environmental issue in your area, that would be an excellent topic for a report.

The good news is that when you've completed the work asked for in this lesson, you'll have done the bulk of your Section 3 Assignment.

Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer question 2.

Suggested Answers

There are no suggested answers for this lesson, but if you've completed the work it assigns, you're well on your way to having completed your Section 3 Assignment.

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Lesson 5: Careers Related to Environmental Law



The fact that you're taking a Career and Technology Studies course in environmental law may indicate that you have some interest in pursuing a career that's related to this area. Perhaps it's a traditional legal career, or perhaps it's a career more closely tied to environmentalism. Of course, you may be taking this course purely out of interest and have no thoughts of a career in this area; but if you would like to learn more about career opportunities, this would be a good time to dig around a little and see what you can learn.

Note: This lesson is purely optional and is intended to provide some direction for students interested in a career related to environmentalism or environmental law. Think of it as a big Going Further activity, and decide for yourself how much time you wish to devote to it.

If you're interested in a career related to environmentalism, you have a wide selection of possibilities. What follows is a list of ideas for employment that's related to the environment. They're by no means all related to legal aspects of environmentalism, and they're not really organized in any particular order.

- lawyer specializing in environmental law
- public-relations consultant for an industry that affects the environment
- speech writer specializing in environmental issues
- environmental activist
- environmental lobbyist
- arbitrator/mediator
- energy-management technologist

- biochemist
- park ranger
- horticulturalist
- botanist
- water purificator
- conservationist
- geophysicist
- government employee in a department of the environment
- hydrologist (a specialist in water above and below the ground)
- wildlife-research biologist
- marine-pollution specialist
- atmospheric scientist
- silviculturalist (a specialist in the care of forests)
- provincial insect-control specialist
- environment-energy economist
- district soil conservationist
- health-and-safety officer for a petroleum company
- environmental consultant
- pollution-control officer
- biologist
- agriculturalist
- wildlife assistant
- energy consultant
- zoologist
- environmental educator
- geologist



If careers in areas like these—or in any other areas related to environmental concerns—interest you, take some time now to investigate one or more of them. Your librarian, your Legal Studies or CTS teacher, or your guidance counsellor should be able to get you started in your research. And, of course, the Internet can be a great tool to use for a task like this.

Here are a few websites that might help you get started:



- Jobs, Workers, Training and Careers: **<http://www.jobsetc.ca/>**
- Industry Canada: **<http://strategis.ic.gc.ca>**
- Occupational Information (OCCinfo):
<http://www.alberta-learning.ab.ca/occinfo>
- Alberta Apprenticeship and Industry Training: **<http://www.tradesecrets.org>**
- Alberta Learning Information Service: **<http://www.alis.gov.ab.ca>**

As you do your research, you might consider making up job-profile sheets and filling them in as you acquire information. Here's a sample of a typical job-profile sheet you could use (though you can adapt it as you see fit).

Job Profile	
Job Title	
Educational Requirements	
Skill and Aptitude Requirements	
Functions/Responsibilities	
Employment/Advancement Opportunities	
Salary Range	
Benefits and Drawbacks	
Resources Used for Research and Future Reference	

Now here's a brief explanation of each of the boxes on your chart:

- **Job Title:** Give either the official or the commonly used title for a person who carries out the duties involved.
- **Educational Requirements:** Outline the level of formal schooling/education necessary for the position: college diploma? University degree? Apprenticeship?
- **Skill and Aptitude Requirements:** Explain what a person must be able to do to be successful at this job and what personal qualities he or she should have. (You might want to separate this box into two—one for skills, such as keyboarding—and one for aptitudes—such as an ability to work well with people.)
- **Functions/Responsibilities:** Here explain the principal tasks this position involves.
- **Employment/Advancement Opportunities:** Explain just how good the prospects are for obtaining work in this area. As well, describe at least one position or opportunity that a person who's successful in this position might move on to.

- **Salary Range:** Give the general range of salaries available to people doing this work.
- **Benefits and Drawbacks:** Comment on the suitability of this job according to your own needs and interests. How would this position suit you? In what ways might it be less than ideal?
- **Resources Used for Research and Future Reference:** List the sources you discovered and the people you contacted to acquire your information along with other places you could go in the future to learn more.

Probably the best way to get information is to speak with someone who's actually doing the job you're interested in. Once you've decided on the job you're going to investigate and learned a bit about it, you might consider trying to contact someone—in person or over the phone—who does that job and find out firsthand just what the job involves. If you're studying in a classroom situation, your teacher should be able to help you arrange an interview. If you're a distance-learning student, you may have to do more on your own.

Some students find it difficult to make contacts of this sort, but if you phone someone, politely identify yourself as a Legal Studies student, and explain the purpose of the interview, most people will be more than willing to give you a few minutes of their time—either over the phone or in person at a time you can arrange.



The following pointers should help you conduct your interview:

- Prepare beforehand. Have all the questions you want to ask written down in a logical order. Concentrate on questions that are specific to the job you're investigating.
- When you arrange the interview, try to find a time when your interviewee isn't usually very busy. You'll be able to get much better information if he or she isn't rushing to get back to work.
- If you're conducting the interview in person (rather than over the phone), be sure to dress appropriately.
- Keep your questions on a professional level. Asking questions that are too personal, such as how much money a person makes, may make the interviewee uncomfortable (you'll have to get this sort of information elsewhere).
- Listen carefully and make notes. If you wish to record the interview on audiotape, be sure to get permission first from your interviewee.

- Keep the interview down to a reasonable length of time—maybe 10 or 15 minutes. Tell the interviewee how long the talk will last, and be sure you stick to that time frame.
- Thank your interviewee when the discussion is over. Following up with a brief thank-you note a few days later is a very nice touch.

Of course, you may not end up doing an interview; it's simply suggested as a good way to get information. But you should try to do job profiles on at least one or two professions if you're thinking at all of a career in environmental law or some other area related to the environment. The more you can learn about career possibilities now, the wiser a choice you'll be able to make down the road.

Now that you've investigated one or more careers, do the following:

1. Explain why you selected the career(s) you did.
2. If you researched only one career, do you think you would enjoy doing it? If you researched more than one, which one do you think you'd prefer? Give your reasons.
3. Do you think you possess the skills and aptitudes for this career? Explain your answer with reference to your own abilities and those demanded by the job.
4. If you applied for a job in this career area, suggest some questions you might anticipate at the interview stage. For each question, what answer would you supply?
5. Write a short letter introducing yourself and state why you might be interested in the selected career.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

Suggested Answers

There are no suggested answers for this lesson; but if you're thinking of a career related to the environment and you were able to research one or more career areas, you should have benefited from it. If you found the Job Profile format useful in researching employment areas, consider using it to investigate other career possibilities that interest you. A systematic approach like this can help make a difficult decision such as choosing a career much easier.

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Section 3 Conclusion



In this section you've looked at ways in which concerned people can fight legal battles in an attempt to keep our environment as clean and as natural as possible. In Lesson 1 you were introduced to a number of prominent environmental groups in order to give you an idea of what sorts of organizations exist and how they operate. Then, in Lesson 2, you examined a couple of actual cases showing these groups in action and illustrating their tactics and what they can accomplish.

Lesson 3 changed focus, giving you an overview of the procedures used to review proposed projects and the chance the public has for input into the decision-making process. And in Lesson 4 you chose a challenging issue that interests you and did some research into it.

Finally, if you chose to do Lesson 5, you researched one or two career areas related to environmental law—or environmental issues in general.

LEGAL STUDIES 2030 SUMMARY



Environmental law. It's a subject we hear a great deal about today, but most people are rather confused by it. While the majority of people who follow the news and are interested in the world around them know a surprising amount about the environmental problems that challenge our civilization, the legal aspects of those problems are seldom as well understood. The overlap between provincial and federal jurisdiction, the various laws relating to the environment, all the different environmental boards and panels within government and the private environmental organizations outside of government, the legal decisions handed down by one court and then appealed to another—all these things can make environmental law a bit hard to sort out.

At this point, you have a great deal more to learn about the ins and outs of environmental law, but you've now got a solid basis that should enable you to understand the fundamental legal aspects of the environmental problems we face. If these issues concern you (as they should), why not make an effort to learn more about them and—even better yet—make your voice heard when government is making decisions bound to affect the world you live in? We now know that our world is a finite space, and anything that pollutes it anywhere ultimately affects all of it. For this reason, good citizenship seems to demand that we all make our voices heard whenever the health of our environment is at stake.

CONGRATULATIONS

Congratulations on completing Legal Studies 2030! We hope you've enjoyed taking this course and that you've found it both interesting and rewarding. If you have, perhaps you'll consider taking another Legal Studies course in the future.



Glossary

accused: a person charged with a criminal offence; defendant

Act of God: an unforeseeable event brought about by natural causes—such as an earthquake or a tornado

bylaws: laws passed by municipal governments

civil disobedience: the deliberate refusal to obey a law in order to pressure the government to change the law

civil law: private law

common law: the body of law that has gradually developed as judges have made decisions in cases they've heard

constitution: a law establishing the fundamental principles on which a nation is based

criminal law: the branch of public law that sets out certain acts as crimes and punishes those acts

Crown prosecutor: a lawyer employed by the government to prosecute those accused of criminal offences

damages: money awarded a plaintiff by a court to compensate for a wrong suffered

defendant: the party being sued in a civil suit; the party charged with an offence in a criminal case

due diligence: the defence that the defendant took all reasonable precautions but that some harm resulted anyway

ecosystem: a dynamic system made up of living organisms and their non-living environment that interact as a unit

environment: everything that surrounds something or someone

environmental impact assessment: a formal evaluation of a project before it takes place to determine its potential environmental effects and to suggest safeguards or alternatives if necessary

environmental review: a process of assessing potential harm that a proposed project might do to the environment and weighing that harm against likely benefits

expert witness: a witness called to give evidence in an area of technical expertise—such as a doctor, an engineer, or a scientist

indictable offence: a serious criminal offence

injunction: a court order directing a person not to do (or sometimes to do) something

jurisdiction: authority—such as the power to make laws

legislation: a law or laws that have been passed by a governing body

legislators: the people elected to govern a country or some part of it (such as a province)

liable: legally responsible

lobby: to present a specific viewpoint on issues to the government in the attempt to persuade it to create, repeal, or change laws so as to support that viewpoint

negligence: the failure of a person to use reasonable care that results in an injury or loss to another

nuisance: one party's unreasonable interference with the right of another party to make use of his or her property

patriate: return to one's country

plaintiff: the party bringing a civil suit against another party

precedent: a court decision that lower courts must follow when making decisions in similar cases

private law: the branch of law that governs the relations between individuals

private nuisance: a nuisance involving only a few people

public law: the branch of law that governs the relations between the state and private citizens

public nuisance: a nuisance involving a large number of people or all the residents of an area

quash: to declare void

regulatory offence: an offence created by a regulation based on a statute rather than by the statute itself

repeal: to withdraw a law

slander: to utter untrue statements that damage another's reputation

statute: a law passed by a governing body

stay: to stop something from happening

strict liability: liability that results when a legal activity causes harm to another even if no negligence was involved

summary conviction offence: a relatively minor criminal offence that is tried quickly

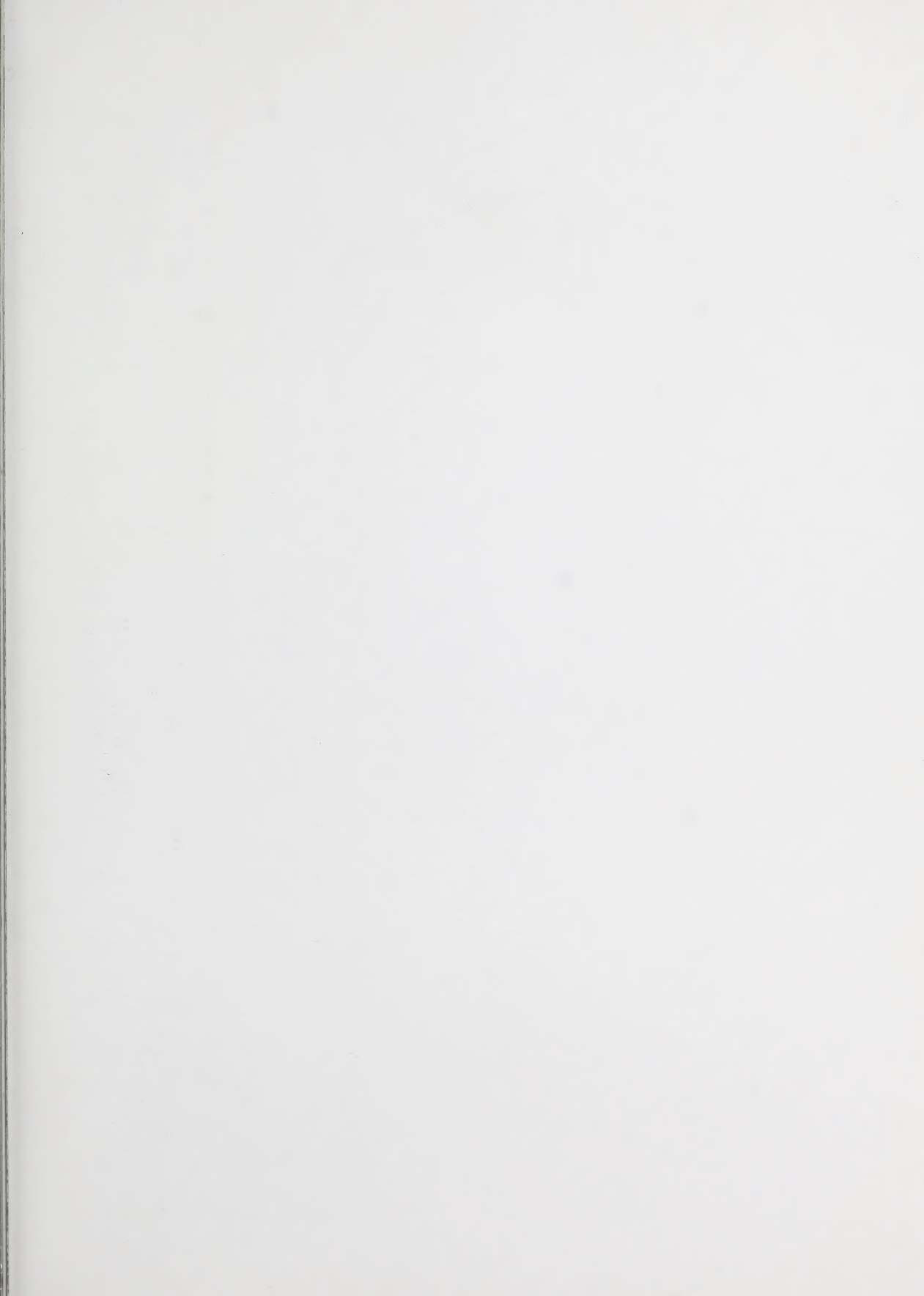
sustainable development: the use of natural resources that meets the needs of people today while conserving for the future

tort: a civil wrong other than a breach of contract

treaty: a contractual agreement made between two or more separate political authorities—such as sovereign nations or states

trespass: to go onto another person's land without permission

ultra vires: a Latin expression meaning *beyond the power*—that is, beyond the authority of a government to make laws about



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